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1998B00288

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Department.



Native Title (Federal Court) Regulations 1998

Statutory Rules 1998 No. /

272

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations under the *Native Title Act 1993*.

Dated *25 August* 1998.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

DARYL WILLIAMS
Attorney-General



Native Title (Federal Court) Regulations 1998

Statutory Rules 1998 No. ¹
made under the
Native Title Act 1993

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1998, ¹ *Native Title (Federal Court) Regulations 1998* 1

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1 Name of regulations

These regulations are the *Native Title (Federal Court) Regulations 1998*.

2 Commencement

These regulations commence on 30 September 1998.

3 Definition

In these regulations:

Act means the *Native Title Act 1993*.

4 Forms

In these regulations, a reference to a form by number is a reference to the form so numbered in the Schedule.

5 Native title and compensation application forms

- (1) For paragraph 61 (5) (a) of the Act, an application must be in the following form:
 - (a) for a claimant application for a determination of native title — Form 1;
 - (b) for a non-claimant application for a determination of native title — Form 2;
 - (c) for a revised native title determination application — Form 3;
 - (d) for a compensation application — Form 4.
- (2) For paragraphs 61 (5) (c) and (d) of the Act, an application must contain the information and be accompanied by the documents as mentioned in the form for the application.

Note For the prescribed fee, see the Federal Court Regulations, r 2.

6 Notification of potential party in relation to an application

A notice under paragraph 84 (3) (b) of the Act may be in accordance with Form 5.

Schedule Forms

(regulations 4 and 6)

Form 1 Native title determination application — claimant application

(paragraph 5 (1) (a))

Native Title Act 1993

The application of [*name of applicant(s)*]

Note 1 This form is to be used for an application mentioned in subsection 61 (1) of the Act for a determination of native title in relation to an area for which there is no approved determination of native title.

Note 2 Section 62 of the Act requires this application to be accompanied by an affidavit sworn by the applicant:

- (a) that the applicant believes that the native title rights and interests claimed by the native title group have not been extinguished in relation to any part of the area covered by the application; and
- (b) that the applicant believes that none of the area covered by the application is also covered by an entry in the National Native Title Register; and
- (c) that the applicant believes that all of the statements made in the application are true; and
- (d) that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it; and
- (e) stating the basis on which the applicant is authorised as mentioned in paragraph (d).

A. Details of the claim

1. The applicant applies for a determination of native title under subsection 61 (1) of the *Native Title Act 1993*.
2. The applicant is entitled to make this application as [*capacity in which the applicant claims to be entitled to make the application, eg a person authorised by the native title claim group to make the native title determination application: see Act, s 61 (1)*].

3. The schedules to this application contain the following information:

Schedule A [see Act, s 61]

The names (including Aboriginal names) of the persons (the *native title claim group*) on whose behalf the application is made or a sufficiently clear description of the persons so that it can be ascertained whether any particular person is 1 of those persons.

Schedule B [see Act, s 62]

Information identifying the boundaries of:

- (a) the area covered by the application; and
- (b) any areas within those boundaries that are not covered by the application.

Note This information must be included as well as the map mentioned in Schedule C.

Schedule C [see Act, s 62]

A map showing the boundaries of the area covered by the application.

Schedule D [see Act, s 62]

Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.

Schedule E [see Act, s 62]

A description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests). The description must not consist only of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

Schedule F [see Act, s 62]

A general description of the native title rights and interests claimed and, in particular, the factual basis on which it is asserted that:

- (a) the native title claim group has, and the predecessors of those persons had, an association with the area; and
- (b) there exist traditional laws and customs that give rise to the claimed native title; and
- (c) the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

Schedule G [see Act, s 62]

Details of any activities in relation to the land or waters currently carried on by the native title claim group.

Schedule H [see Act, s 62]

Details of any other applications to the High Court, Federal Court or a recognised State/Territory body, of which the applicant is aware, that have been made in relation to the whole or a part of the area covered by the application and that seek a determination of native title or a determination of compensation in relation to native title.

Schedule I [see Act, s 62]

Details of any notices under section 29 of the Act (or under a corresponding provision of a law of a State or Territory), of which the applicant is aware, that have been given and that relate to the whole or a part of the area.

Schedule J

A draft of the order to be sought if the application is unopposed.

Schedule K

The name of each representative Aboriginal/Torres Strait Islander body for the area covered by the application.

Schedule L [see Act, ss 47, 47A, 47B and 61A]

For the area covered by the application, details of:

- (a) any area for which a pastoral lease is held by or on behalf of the members of the native title claim group; and
- (b) any area leased, held or reserved for the benefit of Aboriginal peoples or Torres Strait Islanders that is occupied by or on behalf of the members of the native title claim group; and
- (c) any vacant crown land occupied by the members of the native title claim group; and
- (d) any area mentioned in paragraph (a), (b) or (c) over which the extinguishment of native title is required by section 47, 47A or 47B of the Act to be disregarded.

[The following items are not required, but will be relevant when the Native Title Registrar considers the claim for registration under section 190A of the Act.]

Schedule M [see Act, s 62]

Details of any traditional physical connection with any of the land or waters covered by the application by any member of the native title claim group.

Schedule N [see Act, s 62]

Details of the circumstances in which any member of the native title claim group has been prevented from gaining access to any of the land or waters covered by the application.

Schedule O [see Act, s 190C]

Details of the membership of the applicant or any member of the native title claim group in a native title claim group for any other application that has been made in relation to the whole or part of the area covered by this application.

Schedule P [see Act, s 190B]

Details of any claim by the native title claim group of exclusive possession of all or part of an offshore place.

Schedule Q [see Act, s 190B]

Details of any claim by the native title claim group of ownership of minerals, petroleum or gas wholly owned by the Crown.

Schedule R [see Act, s 190C]

- (1) If the application has been certified by each representative Aboriginal/Torres Strait Islander body, a copy of the certificate.
- (2) If the application has not been certified by each representative Aboriginal/Torres Strait Islander body:
 - (a) a statement that the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group; and
 - (b) the grounds on which the Registrar should consider that the statement is correct.

Note For the meaning of *authorise*, see the Act, s 251B.

Schedule S [see Act, s 64]

If the application is an amended application, details of the difference between this application and the original application.

Schedule T

Any other relevant information that the applicant wants to provide.

Date:

[Signed by applicant or applicant's solicitor]

B. Filing and service

This application is filed by [*name*], whose address for service is [*insert address*].

This application is filed for [*name*]. [*Delete if applicant is unrepresented.*]

The applicant's address is [*place of residence or business*].

Form 2

Native title determination application — non-claimant application

(paragraph 5 (1) (b))

Native Title Act 1993

The application of [*name of applicant*]

Note This form is to be used for an application mentioned in subsection 61 (1) of the *Native Title Act 1993* for a determination of native title in relation to an area for which there is no approved determination of native title.

A. Details of the claim

1. The applicant applies for a determination of native title under subsection 61 (1) of the *Native Title Act 1993*.
2. The schedules to this application contain the following information:

Schedule A

Information identifying the boundaries of:

- (a) the area covered by the application; and
- (b) any areas within those boundaries that are not covered by the application.

Note This information must be included as well as the map mentioned in Schedule B.

Schedule B

A map showing the boundaries of the area covered by the application.

Schedule C

Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.

Schedule D

Details of any interest held by the applicant in the area covered by the application and any document (including a document of title) or other material that is evidence of that interest.

Schedule E

A draft of the order to be sought if the application is unopposed.

Schedule F

Any other relevant information that the applicant wants to provide.

Date:

[Signed by applicant or applicant's solicitor]

B. Filing and service

This application is filed by *[name]*, whose address for service is *[insert address]*.

This application is filed for *[name]*. *[Delete if applicant is unrepresented.]*

The applicant's address is *[if the applicant is an individual, place of residence or business; if the applicant is a corporation, principal place of business]*.

Form 3 Revised native title determination application

(paragraph 5 (1) (c))

Native Title Act 1993

The application of [*name of applicant*]

Note This form is to be used for an application, as mentioned in subsection 61 (1) of the *Native Title Act 1993*, for revocation or variation of an approved determination of native title, on the grounds set out in subsection 13 (5) of the Act.

1. The applicant applies for the revocation [*or variation*] of an approved determination of native title.
2. The applicant is entitled to make this application as [*capacity in which the applicant claims to be entitled to make the application, eg the registered native title body corporate: see Act, s 61 (1)*].
3. The schedules to this application contain the following information:

Schedule A

Information identifying the boundaries of:

- (a) the area covered by the application; and
- (b) any areas within those boundaries that are not covered by the application.

Note This information must be included as well as the map mentioned in Schedule B.

Schedule B

A map showing the boundaries of the area covered by the application.

Schedule C

Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.

Schedule D

The name of each representative Aboriginal/Torres Strait Islander body for the area covered by the application.

Schedule E

A copy of the approved native title determination.

Schedule F [see Act, s 13]

Details of events (if any) that have taken place since the approved determination of native title was made which make that determination no longer correct.

Schedule G [see Act, s 13]

Details of the grounds (if any) for varying or revoking the determination in the interests of justice.

Schedule H

For an application for variation of an approved determination of native title, a draft of the order sought.

Schedule I

Any other relevant information that the applicant wants to provide.

Date:

[Signed by applicant or applicant's solicitor]

B. Filing and service

This application is filed by [*name*], whose address for service is [*insert address*].

This application is filed for [*name*]. [*Delete if applicant is unrepresented.*]

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a corporation, principal place of business*].

Form 4 Compensation application

(paragraph 5 (1) (d))

Native Title Act 1993

The application of [*name of applicant(s)*]

Note 1 This form is to be used for an application, as mentioned in subsection 61 (1) of the *Native Title Act 1993*, for a determination of compensation.

Note 2 Section 62 of the Act requires this application to be accompanied by an affidavit sworn by the applicant:

- (a) that the applicant believes that native title rights and interests exist or have existed in relation to the area covered by the application; and
- (b) that the applicant believes that all of the statements made in the application are true; and
- (c) that the applicant is authorised by all the persons in the compensation claim group to make the application and to deal with matters arising in relation to it; and
- (d) stating the basis on which the applicant is authorised as mentioned in paragraph (c).

A. Details of the claim

- 1. The applicant applies for a determination of compensation under subsection 61 (1) of the *Native Title Act 1993*.
- 2. The applicant is entitled to make this application as [*capacity in which the applicant claims to be entitled to make the application, eg a person authorised by the compensation claim group to make the native title determination application: see Act, s 61 (1)*].
- 3. The schedules to this application contain the following information:

Schedule A [see Act, s 61]

Either:

- (a) the names (including Aboriginal names) of the persons (the **compensation claim group**) on whose behalf the application is made or a sufficiently clear description of

- the persons so that it can be ascertained whether any particular person is 1 of those persons; or
- (b) the name of the registered native title body corporate.

Schedule B [see Act, s 62]

Information identifying the boundaries of:

- (a) the area covered by the application; and
- (b) any areas within those boundaries that are not covered by the application.

Note This information must be included as well as the map mentioned in Schedule C.

Schedule C [see Act, s 62]

A map showing the boundaries of the area covered by the application.

Schedule D [see Act, s 62]

Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.

Schedule E [see Act, s 62]

A description of the native title rights and interests in relation to particular land or waters (including any activities in exercise of those rights and interests) for which compensation is claimed. The description must not merely consist of a statement to the effect that the native title rights and interests are all native title rights and interests that existed, or have not been extinguished, at law.

Schedule F

The name of each representative Aboriginal/Torres Strait Islander body for the area covered by the application.

Schedule G [see Act, s 62]

A general description of the native title rights and interests for which compensation is claimed and, in particular, the factual basis on which it is asserted that:

- (a) the compensation claim group, and the predecessors of those persons, had an association with the area; and
- (b) there existed traditional laws and customs that give rise to the claimed native title; and
- (c) the compensation claim group had continued to hold the native title in accordance with those traditional laws and customs.

Schedule H [see Act, s 62]

Details of activities in relation to the land or waters that are or were carried on by the compensation claim group.

Schedule I

Details of the act which it is claimed extinguished or affected native title rights and interests for which compensation is claimed, including:

- (a) the government or other person that did the act and whether the act has been validated; and
- (b) if the act has been validated, how this was done; and
- (c) copies of:
 - (i) all searches of official title registers (such as the title register of crown lands and the land title register of the relevant State or Territory); and
 - (ii) all searches conducted with public bodies and authorities;

that identify existing or expired non-native title rights and interests in relation to the land or waters covered by the compensation application.

Schedule J

Details of the basis for the compensation application, such as the provision of the Act that deals with the compensation entitlement.

Schedule K [see Act, s 62]

Details of any other applications to the High Court, Federal Court or a recognised State/Territory body, of which the applicant is aware, that have been made in relation to the whole or a part of the area covered by the application and that seek a determination of native title or a determination of compensation in relation to native title.

Schedule L [see Act, s 62]

Details of any notices under section 29 of the Act (or under a corresponding provision of a law of a State or Territory), of which the applicant is aware, that have been given and that relate to the whole or a part of the area.

Schedule M

Details of any compensation received by the applicant or to which the applicant may be entitled under any agreement or award because of the act or a related act.

Schedule N [see Act, s 79]

Whether the applicant is claiming non-monetary compensation, and if so, the nature of the non-monetary compensation claimed.

[The following items are not required, but may be included.]

Schedule O [see Act, s 62]

Details of any traditional physical connection with any of the land or waters covered by the application by any member of the compensation claim group.

Schedule P [see Act, s 62]

Details of the circumstances in which any member of the compensation claim group has been prevented from gaining access to any of the land or waters covered by the application.

Schedule Q

Any other relevant information that the applicant wants to provide.

Date:

[Signed by applicant or applicant's solicitor]

B. Filing and service

This application is filed by [*name*], whose address for service is [*insert address*].

This application is filed for [*name*]. [*Delete if applicant is unrepresented.*]

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a corporation, principal place of business*].

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

(regulation 6)

Native Title Act 1993

To:

The Registrar

Federal Court of Australia

I [*or We*]:

Name of person(s) giving notice:

Address of person(s) giving notice:

Address for service of person(s) giving notice:

Give notice under paragraph 84 (3) (b) of the Act that I [*or we*] want to be a party in relation to the application under section 61 of the Act made by [*name of the applicant*] because:

[state in what way a determination in relation to the application may affect the interests of the person(s) giving notice].

Date:

Signature(s) of person(s) giving notice:

Note

1. Made by the Governor-General on ^h 1998, administered
by the Attorney-General, and notified in the *Commonwealth of Australia*
Gazette on _h 1998.

25 August
1 September