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Statutory Rules 1998 No. *A*¹

297

Federal Court Amendment Rules 1998 (No. 2)

WE, Judges of the Federal Court of Australia, make the following rules of court under the *Federal Court of Australia Act 1976*.

Dated 25 September 1998.

M.E.J. BLACK C.J.
J.F. GALLOP J.
M.R. WILCOX J.
J.C.S. BURCHETT J.
J.A. MILES J.
R.S. FRENCH J.
M.R. EINFELD J.
M.L. FOSTER J.
M.C. LEE J.
H.W. OLNEY J.
D.G. HILL J.
M.F. O'LOUGHLIN J.
D.F. O'CONNOR J.
T.J. HIGGINS J.
P.C. HEEREY J.
D.P. DRUMMOND J.
R.E. COOPER J.
C.J.S.M. CARR J.
C.M. BRANSON J.

J.H. MATHEWS J.
K.E. LINDGREN J.
B.J.M. TAMBERLIN J.
R. SACKVILLE J.
R.D. NICHOLSON J.
P.D. FINN J.
J.R.F. LEHANE J.
A.M. NORTH J.
R.N. MADGWICK J.
R. MERKEL J.
J.R. MANSFIELD J.
A.R. EMMETT J.
R.A. FINKELSTEIN J.
M.S. WEINBERG J.
J.A. DOWSETT J.
Judges of the Federal
Court of Australia

W.G. SODEN
Registrar

1. Name of rules

1.1 These rules are the *Federal Court Amendment Rules 1998 (No. 2)*.

2. Commencement

2.1 These rules commence on 30 September 1998.

3. Amendment

3.1 The Federal Court Rules² are amended as set out in these rules.

4. Order 78

4.1 Omit the Order, substitute new Order 78 as set out in the Schedule.

5. Schedule

5.1 Form 137:

Omit the form.

5.2 Form 138:

Omit “subrule 16 (5)”, substitute “subrule 39 (4)”.

5.3 Form 141:

Omit “subrules 23 (1) and 24 (2)”, substitute “subrules 24 (1) and 25 (2)”.

SCHEDULE

Rule 4

ORDER 78 — NATIVE TITLE PROCEEDINGS

*Division 1 — Introductory***Interpretation for Order 78****1. (1)** In this Order:

main application means an application made under section 61 of the Native Title Act.

Native Title Act means the *Native Title Act 1993*.

Old Native Title Act means the *Native Title Act 1993* as in force immediately before 30 September 1998.

Registrar means:

- (a) for an application made to the Native Title Registrar before 30 September 1998 — the District Registrar of the Court in the State or Territory in which the application was made; or
- (b) in any other case — the District Registrar of the Court in the State or Territory in which the application is filed.

(2) In this Order, a reference to the Native Title Registrar or the NNTT includes a reference to a State or Territory body that is an equivalent body under section 207B of the Native Title Act.

Expressions used in the Native Title Act

2. Unless the contrary intention appears, an expression used in this Order and in the Native Title Act has the same meaning in this Order as it has in the Native Title Act.

Note See, for example, the definitions of *claimant application*, *Commonwealth Minister*, *Native Title Registrar*, *NNTT*, *non-claimant application* and *recognised State/Territory body* in section 253 of the Native Title Act.

SCHEDULE — continued

Application of Order 78

3. (1) This Order applies to a proceeding in the Court to which the Native Title Act applies.

(2) The other Orders of these rules apply, so far as they are relevant and not inconsistent with this Order, to a proceeding in the Court to which the Native Title Act applies.

(3) This Order applies to a recognised State/Territory body in relation to a power delegated to the body by the Native Title Registrar under section 191 of the Native Title Act.

Cultural or customary concerns

4. (1) At any time in a proceeding, the Court may give the directions and make the orders it considers appropriate to take account of the cultural or customary concerns of a party to the proceeding or another person.

Example

The Court may make a ruling on the naming of recently deceased people.

(2) In considering orders to be made, the Court may seek any information it considers appropriate from a party to the proceeding.

Division 2 — Applications

Subdivision 1 — Applications made before 30 September 1998

Applications taken to be made to the Court

5. (1) This rule applies to an application made before 30 September 1998 to the Native Title Registrar under section 61 of the Old Native Title Act, and taken to be made to the Federal Court under the *Native Title Amendment Act 1998*.

SCHEDULE — continued

Note Certain applications given to the Native Title Registrar are taken to have been made to the Federal Court as a consequence of the commencement of the *Native Title Amendment Act 1998*. For this and other consequences, see Part 3 of Schedule 5 to the *Native Title Amendment Act 1998*.

(2) As soon as reasonably practicable on or after 30 September 1998, the Registrar must fix a time, date and place for a directions hearing.

(3) The Court may give the directions and make the orders it considers appropriate in relation to the application.

Subdivision 2 — Applications made on or after 30 September 1998

Main application (native title and compensation)

6. (1) An applicant must file 2 copies of a main application and each map and other accompanying document with the Court.

Note 1 The *Native Title (Federal Court) Regulations 1998* prescribe the following forms for applications under section 61 of the Native Title Act:

- Form 1 (Native title determination application — claimant application)
- Form 2 (Native title determination application — non-claimant application)
- Form 3 (Revised native title determination application)
- Form 4 (Compensation application).

Note 2 Form 1 is also the prescribed form for amending a claimant application (see Schedule S to Form 1). Form 2 and 4 may be used for amending a non-claimant application and compensation application respectively.

(2) The application must be signed and an accompanying affidavit sworn or affirmed, by each person named in the application as an applicant.

(3) As soon as reasonably practicable after an application is filed, the Registrar must forward 1 copy of the application and each map and accompanying document to the Native Title Registrar.

(4) The Registrar must fix a time, date and place for a directions hearing.

SCHEDULE — continued

(5) The Court may give the directions and make the orders it considers appropriate.

Form of amendment of main application

7. (1) A person applying under section 64 or 66B of the Native Title Act to amend a main application must file 2 copies of the application and each map and other accompanying document with the Court.

Note 1 An application may be amended under section 64 of the Native Title Act or in any other way as ordered by the Court. For consequences of amending an application, see section 190 of that Act.

Note 2 For replacing an applicant, see section 66B of the Native Title Act.

(2) As soon as reasonably practicable after an application is filed, the Registrar must forward 1 copy of the application and each map and accompanying document to the Native Title Registrar.

(3) The Court may give the directions and make the orders it considers appropriate.

Joinder of parties to main application

8. (1) This rule applies to a person who wants to be a party to a main application.

(2) If the 3 month period mentioned in paragraph 66 (10) (c) of the Native Title Act (the *relevant period*) has not ended for the application, the person must notify the Court in writing, which may be in the form prescribed in the *Native Title (Federal Court) Regulations 1998*.

Note The *Native Title (Federal Court) Regulations 1998* prescribe Form 5 as a form which may be used for notice of intention to become a party to an application.

SCHEDULE — continued

(3) At the end of the relevant period, the Registrar must give notice of each party joined to the application to the applicant and to any other party to the proceeding as the Court directs, and in the manner that the Court directs.

(4) If the relevant period has ended, the person must seek the leave of the Court by applying to the Court in writing setting out how the person's interests may be affected by a determination in the proceeding.

Note The Court may at any time join any person as a party to a proceeding if the Court is satisfied that the person's interests may be affected by a determination in the proceeding (see subsection 84 (5) of the Native Title Act).

(5) The person seeking leave must, within the time directed by the Court, give notice of his or her intention to apply to be joined to the applicant and to any other party to the proceeding as the Court directs, and in the manner that the Court directs.

(6) If the Court grants the person leave to be joined, notice of the decision must be given to the applicant and to any other party to the proceeding as the Court directs, and in the manner that the Court directs.

Withdrawal of a party

9. If a party to a proceeding, other than the applicant, wishes to cease to be a party, the party may:

- (a) at any time before the first hearing of the proceeding — give written notice to the Court; or
- (b) in any other case — apply to the Court for leave to withdraw from the proceeding.

Note A party who gives notice to the Court under paragraph (9) (a) ceases to be a party to the proceeding (see subsection 84 (6) of the Native Title Act). For replacing an applicant, see section 66B of the Native Title Act.

SCHEDULE — continued

Applications other than main applications

10. (1) This rule applies to an application other than a main application.

(2) Unless the Court otherwise directs, an application to the Court for which no form is prescribed under the *Native Title (Federal Court) Regulations 1998*, must be:

- (a) in the appropriate form under these rules with any variations that the nature of the case requires; and
- (b) accompanied by an affidavit setting out the grounds in support of the application.

Example

The appropriate form for a notice of motion is Form 27, and the appropriate form for an application for which no other form is provided in the rules is Form 5 of the rules.

Note At 30 September 1998, no form is prescribed under the *Native Title (Federal Court) Regulations 1998* for certain applications, including:

- for *just terms* compensation (under section 53 of the Native Title Act)
- to review a decision of the Native Title Registrar not to accept a claim for registration (under subsection 69 (1) of the Native Title Act)
- to remove details of an agreement from the Register of Indigenous Land Use Agreements (under subsection 69 (1) of the Native Title Act)
- for transfer of records (under subsection 69 (1) of the Native Title Act)
- to be joined as a party to proceeding (subsection 84 (5) of the Native Title Act)
- for leave to withdraw as a party to proceeding (subsection 84 (7) of the Native Title Act)
- to strike out an application (under section 84C of the Native Title Act)
- for an order that mediation cease (under section 86C of the Native Title Act).

(3) The application must be signed, and an accompanying affidavit sworn or affirmed, by each person named in the application as an applicant.

(4) Unless the Court otherwise directs, the application must be served on the applicant to the main application and on the Commonwealth and each State or Territory having jurisdiction over the area to which the main application relates.

SCHEDULE — continued

(5) The Court may order that the application be served on, or notice of the application be given to, other parties to the main application.

Note For giving notice, see rule 43 of this Order.

(6) If an applicant, the Commonwealth, a State or Territory served with an application under this rule, or the NNTT, believes another person has an interest in the application, the applicant, the Commonwealth, the State or Territory or the NNTT may, within 14 days of receiving the application, notify the Court of the name and address of the person believed to have an interest.

(7) The Court may order that the application be served on, or notice be given to, any person that the Court is satisfied has an interest in the application.

(8) A person served with, or given notice of, the application may file and serve a notice of appearance and, unless the Court otherwise directs, becomes a respondent to the application on filing the notice of appearance.

(9) In this rule, *person* may include a group of persons or an organisation.

(10) Nothing in this rule affects any right a person may otherwise have to be joined as a party to a proceeding, or the power of the Court, on its own initiative or at the request of a party, to order that a person be joined as a party to a proceeding.

Application to strike out main application

11. (1) This rule applies to an application by a party to a proceeding to strike out a main application under section 84C of the Native Title Act.

Note Section 84C applies where the main application was made either before or after the commencement of that section: see item 21 of Schedule 5 to the *Native Title Amendment Act 1998*.

SCHEDULE — continued

(2) A copy of the application must be served on the applicant to the main application and any other party to the main application as the Court directs.

(3) As soon as reasonably practicable after the application is filed, the Registrar must:

- (a) give a copy of the application and any accompanying documents to the Native Title Registrar; and
- (b) fix a time, date and place for a directions hearing.

Note The Court must consider the application before proceeding with the main application (see section 84C of the Native Title Act).

Application for review of decision not to accept claim for registration

12. (1) This rule applies to an application under subsection 190D (2) of the Native Title Act for review of a decision of the Native Title Registrar not to accept a claim for registration.

(2) The application must be filed within 42 days from the date of notification of the decision under subsection 190D (1) of the Native Title Act.

Application to remove details of agreement from the Register of Indigenous Land Use Agreements

13. (1) This rule applies to an application under subsection 199C (2) of the Native Title Act for the removal of details of an agreement from the Register of Indigenous Land Use Agreements.

(2) The affidavit accompanying the application must include a statement of:

- (a) if the ground relied on is fraud — the day when the fraud first came to the notice of the applicant; and
- (b) if the ground relied on is undue influence — the date of the first occurrence of the act of undue influence; and
- (c) if the ground relied on is duress — the date of the first occurrence of the act of duress.

SCHEDULE — continued

Application for order about return of, or access to, records

14. (1) This rule applies to an application of the Native Title Act for an order under subsection 203FC (4) of that Act to ensure compliance with directions in accordance with subsection 203FC (3) of that Act.

(2) The application must be filed within 42 days from the day when the directions take effect.

(3) However, if the directions nominate a day for completion of compliance with the directions, the application must be filed within 42 days from that day.

Application for payment of amount held in trust

15. (1) This rule applies to an application to the Court for a direction as to payment of a trust amount (within the meaning of subsection 52 (1) of the Native Title Act).

Note Paragraphs 52 (1) (e) and 52 (2) (b), subparagraph 52 (4) (c) (ii) and subsections 52 (5) and (6) of the Native Title Act provide for a person or a trustee to apply to the Court for a direction as to the payment of an amount held in trust in accordance with paragraph 36C (5) (b), subsection 41 (3) or paragraph 42 (5) (b) of that Act.

(2) If the applicant believes another person has an interest in the Court's direction, the applicant must name the person in the application as a respondent.

Division 3 — Reference to Court of questions of fact or law

Question to be special case

16. (1) A reference to the Court by the NNTT of a question of fact or law under section 136D of the Native Title Act, or a question of law under subsection 145 (1) of that Act, must be in the form of a special case.

SCHEDULE — continued

- (2) The special case must:
- (a) be divided into consecutively numbered paragraphs; and
 - (b) state the facts concisely; and
 - (c) be accompanied by all documents necessary to enable the Court to decide the questions raised by the special case.

(3) The Court may draw from the facts stated in the special case and the accompanying documents any inference, whether of fact or law, which might have been drawn from them if proved at trial.

Special case to be prepared

17. Unless the Court otherwise directs, the special case must be:
- (a) settled by the relevant presiding member of the NNTT; and
 - (b) transmitted by the NNTT, with 4 additional copies, to the Registrar.

Setting down for hearing

18. The Registrar must:
- (a) set down the proceeding for a directions hearing; and
 - (b) notify the NNTT and each party of the date appointed for the directions hearing.

Party having carriage of the proceeding

19. The party having carriage of the proceeding is:
- (a) if the question is referred by the NNTT at the request of a party — that party; and
 - (b) if the question is referred by the NNTT of its own motion — the party appointed by the NNTT for the purpose.

SCHEDULE — continued**Court's discretion**

20. Nothing in this Division affects the general power of the Court to exercise its discretion in relation to cases stated and questions reserved.

Division 4 — Mediation

Note Section 86B of the Native Title Act allows the Court to refer applications and proceedings, in whole or part, to the NNTT for mediation. The purpose of mediation is set out in section 86A. However, subsection 86B (2) allows the Court to make an order that there be no mediation for the whole or part of a proceeding. The order may be made by the Court on its own motion or on application by a party to the proceeding. Section 86C sets out the grounds and process for cessation of mediation.

Cessation of mediation

21. (1) This rule applies to an application under subsection 86C (2) for an order that mediation cease.

Note For the form of application, see rule 10 of this Order.

(2) The Court must not make an order that mediation cease unless it has requested the NNTT to provide a report on the progress of the mediation and has considered the report.

(3) If the NNTT fails to supply a report within 1 month or any other period allowed by the Court, the Court may proceed to consider the application.

SCHEDULE — continued

Division 5 — Appeals from decisions or determinations of NNTT

Definition for Division 5

22. In this Division:

NNTT proceeding means a proceeding in the NNTT from which an appeal to the Court is made.

Application of Division

23. This Division applies to:

- (a) an appeal to the Court under subsection 169 (1) of the Native Title Act on a question of law relating to a right to negotiate application; and
- (b) an appeal to the Court under subsection 169 (2) of that Act on a question of law relating to registration of an indigenous land use agreement.

Instituting an appeal

24. (1) An appeal must be instituted by filing a notice of appeal, in accordance with Form 141, in the District Registry of the Court in the State or Territory where the NNTT proceeding was heard.

Note Subsection 169 (4) of the Native Title Act provides that an appeal must be instituted within the period of 28 days starting on the day on which the decision or determination of the NNTT is given to the person instituting the appeal or within such further time as the Court allows.

(2) The person instituting the appeal is, for the purposes of the appeal, the applicant.

(3) Each party to the NNTT proceeding other than the person instituting the appeal must be named in the notice of appeal as a respondent.

SCHEDULE — continued**Extension of time to appeal**

25. (1) An applicant may apply to the Court for an extension of time to institute the appeal.

- (2)** An application for an extension of time must:
- (a) be made by completing the section headed “Application for extension of period in which to appeal” in Form 141; and
 - (b) be accompanied by an affidavit:
 - (i) explaining why the applicant did not institute the appeal within the 28 day period or will not be able to institute the appeal within that period; and
 - (ii) setting out the grounds for seeking the extension of time.

Serving notice of appeal

26. Unless the Court otherwise directs, the applicant must serve a copy of the notice of appeal and any supporting affidavit on each respondent within:

- (a) 7 days after filing the notice of appeal; or
- (b) any further period allowed by the Court.

Duties of Registrar after notice of appeal is filed

- 27. (1)** If a notice of appeal is filed, the Registrar must:
- (a) fix a time, date and place for a directions hearing; and
 - (b) endorse those details on the notice of appeal; and
 - (c) send a copy of the notice of appeal and any supporting affidavit to the Native Title Registrar; and
 - (d) ask the Native Title Registrar to:
 - (i) make a list of the documents and other things that were before the NNTT at the end of the NNTT proceeding; and
 - (ii) give the list, and the documents and other things mentioned in the list, to the Registrar.

SCHEDULE — continued

- (2) On receiving a list, the Registrar must:
- (a) endorse the date of receipt on the list; and
 - (b) send a copy of the list endorsed with the date to the Native Title Registrar.

Directions hearing

28. At the directions hearing:
- (a) the Court must decide whether any person should be joined as a party to the appeal; and
 - (b) the Court may direct the applicant to file an affidavit providing any further information that the Court considers necessary or desirable.

Notification of hearing appeal

29. After the directions hearing, the Registrar must notify the applicant and each other party to the appeal, of the time, date and place fixed for the hearing of the appeal.

Reference to Chief Justice for direction

30. A Judge or the Registrar may refer the appeal to the Chief Justice for a direction as to whether the appeal should be heard by a single Judge or the Full Court.

Division 6 — Evidence

Evidentiary matters generally

31. (1) The rules generally and the rules of evidence apply, subject to this Order, to a proceeding under this Order.

(2) The Court may, at any time in a proceeding, make any order it considers appropriate relating to evidentiary matters.

SCHEDULE — continued

- (3) Without limiting subrule (2), the Court may make orders:
- (a) restricting access to the transcript of a proceeding; or
 - (b) restricting access to the content of any pleading or any other document on the Court file; or
 - (c) relating to the manner in which evidence may be presented to the Court; or
 - (d) relating to the time when and the place where certain evidence is to be taken; or
 - (e) relating to the manner of identifying and referring to evidence about specified subject matters; or
 - (f) relating to the presentation of evidence about a cultural or customary subject.

Evidence of a cultural or customary subject

32. If evidence of a cultural or customary subject is to be given by way of singing, dancing, storytelling or in any other way other than in the normal course of giving evidence, the party intending to adduce the evidence must tell the Court, within a reasonable time before the evidence is proposed to be given:

- (a) where, when and in what form it is proposed to give the evidence; and
- (b) of any issues of secrecy or confidentiality relating to the evidence or part of the evidence.

Documents referring to certain material

33. (1) A document used in a proceeding that refers to material relating to a cultural or customary subject that a party claims is of a confidential or secret nature must contain a notice of the claim.

- (2) The notice must:
- (a) appear on the front page of the document; and
 - (b) include a short description of the material and the reason for its confidential or secret nature.

(3) The material must be contained in a sealed envelope attached to the document.

SCHEDULE — continued

(4) The sealed envelope must not be opened except by leave of the Court.

(5) Leave may be conditional on non-disclosure of the material or part of the material.

Evidence given in consultation with others

34. (1) The Court may, if it considers that in all the circumstances it is in the interests of justice to do so, receive into evidence statements from a group of witnesses, or a statement from a witness after that witness has consulted with other persons.

(2) If a statement is made by a witness after consultation with other persons, the identity of the persons may, at the direction of the Court, be recorded in the transcript.

Evidence given not in normal course

35. (1) If the Court considers that a person's evidence should be given at a time other than when such evidence would normally be given, the Court may give directions as to how, when and in what form the evidence is to be given.

(2) Subrule (1) applies even if the proceeding has been referred to mediation.

Evidence that may disclose certain information, contrary to a Court order

36. (1) This rule applies if the adducing of evidence or inspection of a document in a proceeding might disclose evidence or information relating to the culture, genealogy, customs or traditions of Aboriginal peoples or Torres Strait Islanders contrary to a direction or order of a court or tribunal.

(2) The person wishing to adduce the evidence or inspect the document must give reasonable notice to:

- (a) the court or tribunal that gave the direction or made the order; and

SCHEDULE — continued

- (b) each person, or the representative of each person, who gave the evidence or produced the information; and
- (c) any other person as the Court may direct.

(3) Notice may be given under paragraph (2) (a) by giving notice to the Registrar of the court or tribunal, or a person performing the duties of a Registrar or holding a similar office.

(4) In this rule, a *court or tribunal* includes the Aboriginal Land Commissioner and any other body or entity with jurisdiction under a law of the Commonwealth or a State or Territory to hear and determine, or make findings and recommendations, or mediate or otherwise act in relation to indigenous land proceedings.

Inspection

37. (1) To enable the proper determination of any matter in question in a proceeding, the Court may make orders for the inspection of any place.

(2) Without limiting subrule (1), the Court may make orders about the method, manner and means of inspection, including orders relating to:

- (a) the provision of maps; or
- (b) the obtaining of permission of owners and occupiers of land; or
- (c) the giving of notice; or
- (d) particulars of travel and accommodation details; or
- (e) particulars of arrival and departure times; or
- (f) the type, number and description of motor vehicles; or
- (g) route description (for example the physical features of route including condition of road surfaces); or
- (h) particulars of distances to be travelled and estimated times of travel and inspection; or
- (i) details of any third party controlling the inspection and any related costs.

SCHEDULE — continued

Division 7 — Judicial Registrars and Assessors

Subdivision 1 — Judicial Registrars

Powers of Judicial Registrars

38. (1) A Judicial Registrar may, in a proceeding or part of a proceeding referred to the Judicial Registrar by the Court, exercise the powers of Court, to the extent that the proceeding relates to the matters set out in section 18AB (2A) of the Act.

Note For directions that may be given to a Judicial Registrar, see subsections 18AB (2B) and (2C) of the *Federal Court of Australia Act 1976*.

(2) Subrule (1) is in addition to the powers delegated to a Judicial Registrar under Order 79.

Subdivision 2 — Assessors

Taking evidence

39. (1) The Court may direct an assessor:

- (a) to take evidence from a party to a proceeding at a time, date and place arranged with the party; and
- (b) to decide how the evidence is to be recorded; and
- (c) to prepare a report of the evidence and give it to the Court by a specified time.

Note Section 83 of the Native Title Act allows the Chief Justice to direct an assessor to assist the Court in relation to a proceeding, subject to the control and direction of the Court.

(2) The Court may, on the application of the assessor or on its own initiative, order a person to be summoned to appear before the assessor to give evidence or produce documents or other things.

SCHEDULE — continued

(3) If a party wishes the assessor to apply for an order under subrule (2), the party must:

- (a) prepare the summons; and
- (b) give 2 copies of the summons to the assessor for submission to the Court.

(4) The summons must be in accordance with Form 138.

(5) If the summons is to produce documents or other things, the documents or other things must be specified in the summons.

Conflict of interest

40. (1) If, at any stage of a proceeding, an assessor becomes aware that the assessor has, or may have, a conflict of interest (within the meaning of subsection 37L (3) of the Act) in relation to the proceeding, the assessor must immediately notify:

- (a) the Chief Justice of the Court; and
- (b) the Judge listed to hear the matter; and
- (c) if the proceeding is being heard by a Full Court — the presiding Judge; and
- (d) each party to the proceeding.

(2) The notice is to be given by the assessor in person or by telephone.

(3) However, if it is not possible to comply with subrule (2), the assessor may give notice by facsimile transmission.

Division 8 — Other**Change of address for service**

41. A party to a proceeding must inform the Court in writing of any change in address for service or contact details within 14 days of the change.

SCHEDULE — continued

Appointment of agent

42. (1) If a party to a proceeding appoints an agent in relation to the proceeding under subsection 84B (1) of the Native Title Act, the party must inform the Court in writing, within 14 days of the appointment, of the name, contact details and address for service of the agent.

(2) The party must inform the Court in writing of any change in name, contact details or address for service within 14 days of the change.

Notice

43. (1) If notice is required to be given under the Native Title Act, these Rules or by order of the Court, the notice must be:

- (a)** in the form determined by the Commonwealth Minister;
or
- (b)** in any other form that the Court considers appropriate.

(2) The notice must be given:

- (a)** by ordinary pre-paid post; or
- (b)** in any other way the Court considers appropriate.

(3) The Court may direct an applicant or the Registrar to give public notice of any hearing before the Court, or any order of the Court, in the manner and at the time the Court considers appropriate.

Native Title Registrar application to Court for order as to notice

44. (1) The Court may, on the written request of the Native Title Registrar under subsection 66 (7) or 66A (3) of the Native Title Act, make orders as to:

- (a)** whether a particular person or class of persons must be given notice of an application; and
- (b)** how the notice is to be given.

(2) The Court may also direct the Native Title Registrar to give any additional notice that the Court considers appropriate.

SCHEDULE — continued

(3) The Registrar must enter and seal the orders and forward a sealed copy to the Native Title Registrar by ordinary pre-paid post or as otherwise determined by the Court.

Overlapping applications

45. (1) If any party to an application has knowledge of the existence of another proceeding before the Court that relates to a native title determination that covers (in whole or in part) the same area as that application, the party must immediately give notice to the Court identifying the other application.

(2) If the Court receives notice under subrule (1), the Court must convene a directions hearing in both proceedings together to consider the future conduct of the proceedings.

(3) The Court may give the directions and make the orders it considers proper for the future conduct of the proceedings.

Court may order adjournment for the purpose of agreement between parties

46. (1) The Court may, at any time in a proceeding, on its own initiative or at the request of a party, order an adjournment to allow the parties time for negotiation.

(2) Negotiations for which an adjournment may be allowed may relate to an agreement about matters other than native title.

(3) The Court may, on its own initiative, at the request of a party, or if the NNTT reports that the negotiations are unlikely to succeed, order that the adjournment end.

(4) This rule does not limit the general power of the Court in relation to mediation.

SCHEDULE — continued

Agreements regarding the practical outcomes of a native title determination

47. Before the Court makes a final determination as to native title, the Court may, at the request of a party or on its own initiative, direct the parties to confer, with the aim of reaching agreement about the practical management of any aspect of the rights and interests to be the subject of the final determination.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on / 1998.
2. Statutory Rules 1979 No. 140 as amended by 1980 No. 87; 1982 Nos. 217 and 408; 1983 No. 264; 1984 Nos. 9 and 258; 1985 Nos. 16, 97, 168 and 227; 1986 Nos. 61, 157 and 324; 1987 Nos. 73, 174 and 197; 1988 Nos. 14, 54, 144, 217 and 306; 1989 Nos. 50, 253 and 318; 1990 Nos. 72, 102, 276, 319, 414 and 453; 1991 Nos. 70, 249, 395 and 461; 1992 Nos. 43, 44, 86, 87, 186, 330, 421 and 453; 1993 No. 40, 45, 137, 225 and 290; 1994 Nos. 63, 130, 224, 279, 332 and 463; 1995 Nos. 31, 46, 239 and 449; 1996 Nos. 29 and 308; 1997 Nos. 82, 87, 143, 174, 204, 277 and 425; 1998 No. 224.

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