

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 250

Issued by the authority of the Attorney-General

Native Title Act 1993

*Native Title (Federal Court) Amendment
Regulations 2007 (No. 1)*

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

The *Native Title (Federal Court) Regulations 1998* (the Principal Regulations) set out the forms to be used for making applications to the Federal Court pursuant to the NT Act, including applications for a determination of native title or compensation.

The forms provided for in the Principal Regulations are required to include information set out in section 62 of the NT Act. Provisions in Schedule 1 to the *Native Title Amendment (Technical Amendments) Act 2007* (the Amendment Act) amend section 62 of the NT Act to change some of the information required in applications. These amendments will commence on 1 September 2007.

These Regulations amend the Principal Regulations to update the forms to be used for making applications to the Federal Court for a determination of native title (Form 1) or compensation (Form 4), so that they accord with the amendments made to section 62 of the NT Act by the Amendment Act.

Details of the Regulations are set out in the [Attachment](#).

Consultation was unnecessary for this legislative instrument as it is minor in nature and does not substantially alter existing arrangements.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 September 2007, to coincide with commencement of the relevant provisions in the Amendment Act.

Details of the Native Title (Federal Court) Amendment Regulations 2007 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of these Regulations is the *Native Title (Federal Court) Amendment Regulations 2007 (No. 1)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 September 2007, to coincide with the commencement of items 1 to 83 of Schedule 1 to the *Native Title Amendment (Technical Amendments) Act 2007*.

Regulation 3 – Amendment of Native Title (Federal Court) Regulations 1998

This regulation provides that the *Native Title (Federal Court) Regulations 1998* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Schedule, Form 1, note 2, paragraph (b)

Paragraph (b) of note 2 in Form 1, presently notes that an application for a determination of native title by a claimant (a claimant application) must be accompanied by an affidavit stating 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* (the Register). This reflects the requirement set out in subparagraph 62(1)(a)(ii) of the NT Act.

The Amendment Act amends this provision to instead require that none of the area is covered by an *approved determination of native title*. This is because the Register may include details of a range of native title related decisions as well as details of approved determinations of native title. A native title related decision that is not an approved determination of native title should not necessarily prevent a claimant application being lodged over an area.

Accordingly, this item amends paragraph (b) of note 2 in Form 1 to provide that the affidavit is required to state that the applicant believes that none of the area covered by the application is also covered by an *approved determination of native title*. This reflects the revised requirement set out in subparagraph 62(1)(a)(ii) of the NT Act.

Item [2] – Schedule, Form 1, note 2, paragraph (e)

Paragraph (e) of note 2 in Form 1 presently notes that a claimant application is to be accompanied by an affidavit sworn by the applicant stating the basis on which the applicant is authorised. This reflects the requirement set out in paragraph 62(1)(a)(v) of the NT Act.

The Amendment Act amends this provision to instead require that the affidavit set out details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it. This increases the utility of requiring the applicant to state the basis on which the applicant is authorised.

This item amends paragraph (e) of note 2 in Form 1 to provide that the affidavit is required to set out details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it.

Item [3] – Schedule, Form 1, Schedule D

Schedule D in Form 1 presently provides that a claimant application must include 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. This reflects the requirement set out in paragraph 62(2)(c) of the NT Act.

That provision is amended by the Amendment Act to make clear that the application only needs to include searches carried out *by or on behalf of the native title claim group*, rather than searches carried out by anybody.

Accordingly, this item amends Schedule D in Form 1 to provide that the application only needs to include searches carried out by or on behalf of the native title claim group.

Item [4] – Schedule, Form 1, after Schedule H

Paragraph 24MD(6B)(d) of the NT Act confers a right on native title claimants to object to certain acts if they are a registered native title claimant within two months of the giving of notice of the act under subparagraph 24MD(6B)(c).

The NT Act is amended by the Amendment Act so that where the Native Title Registrar (the Registrar) has received a claim relating to the area that the notice covers, the Registrar must use his or her best endeavours to consider the claim for registration within two months. This amendment is designed to encourage prompt consideration of the registration of claims that are subject to paragraph 24MD(6B)(c) notices, to ensure that procedural rights of native title claimants are protected wherever possible.

Consequential to this amendment is an amendment to section 62 of the NT Act, which provides that claimant applications must include details of any notice given under paragraph 24MD(6B)(c) that the applicant is aware of and that relates to an area covered by the claim.

Accordingly, this item inserts new Schedule HA into Form 1 to require the claimant application to specify details of any notifications made under paragraph 24MD(6B)(c) of the NT Act, of which the applicant is aware, that have been given and that relate to the whole or part of the claim area. This ensures the Registrar is aware of claims subject to a paragraph 24MD(6B)(c) notice so that these claims can be considered promptly.

Item [5] – Schedule, Form 4, note 2, paragraph (d)

Paragraph (d) of note 2 in Form 4 of the Principal Regulations presently notes that an application by a claim group for a determination of compensation (a compensation application) must be accompanied by an affidavit stating the basis on which the applicant is authorised to make the application. This reflects subparagraph 62(3)(a)(iv) of the NT Act.

The Amendment Act amends this subparagraph to instead require that the affidavit set out details of the process of decision-making complied with in authorising the applicant to make the application.

Accordingly, this item amends paragraph (d) of note 2 in Form 4 to require the affidavit to set out details of the process of decision-making complied with in authorising the applicant to make the application.

Item [6] – Schedule, Form 4, Schedule D

Schedule D in Form 4 in the Principal Regulations provides that a compensation application must include 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. This reflects the requirement set out in paragraph 62(3)(b) of the NT Act.

The Amendment Act amends that paragraph to provide that the application only needs to include searches carried out by or on behalf of the native title claim group, rather than searches carried out by anybody.

Accordingly, this item amends Schedule D in Form 4 to make clear that the application only needs to include searches carried out *by or on behalf of the native title claim group*, rather than searches carried out by anybody.

Item [7] – Schedule, Form 4, after Schedule K

This item inserts new Schedule KA into Form 4 to require the compensation application to specify details of any notifications under paragraph 24MD(6B)(c) of the NT Act, of which the applicant is aware, that have been given and that relate to the whole or part of the area.

This reflects a new requirement in section 62 of the NT Act to include this information in compensation applications.