

# **NATIVE TITLE (FEDERAL COURT) REGULATIONS 2024**

## **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

Under section 215 of the *Native Title Act 1993* (Cth)

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Native Title Act 1993* (Cth) (the Act) provides for the recognition and protection of native title, and establishes ways in which future dealings affecting native title may proceed. The Act also provides certainty as to the effect of native title on other interests in land and waters.

Subsection 215(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 61(5) of the Act provides that applications made under subsection 61(1) of the Act must be in the prescribed form and contain certain information in relation to the matters which are sought to be determined, and be accompanied by any documents, as prescribed.

The *Native Title (Federal Court) Regulations 2024* (the Regulations) replace the *Native Title (Federal Court) Regulations 1998* (the 1998 Regulations). There are no statutory preconditions which must be satisfied for this instrument to be lawfully remade.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Cth), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Act prescribes information and documents to accompany applications made under subsection 61(1). These Regulations prescribe the forms for the following applications:

- claimant application for a determination of native title (Form 1)
- non-claimant application for a determination of native title (Form 2)
- revised native title determination application (Form 3)
- compensation application (Form 4).

These Regulations also prescribe a form (Form 5) that may be used to provide notice of intention to become a party under paragraph 84(3)(b) of the Act.

In repealing and replacing the 1998 Regulations, these Regulations update, simplify and clarify the forms, including by:

- removing unnecessary or duplicative requirements
- further clarifying the link between the information to be included in a form and the requirements of the Act, including by providing references to specific subsections and paragraphs
- including notes to further explain how specific forms interact with different processes under the Act
- updating contact requirements
- noting where information requested by Form 4 may be able to be provided by reference to an approved determination of native title, and
- requiring the applicant to indicate whether the relevant registered native title body corporate (RNTBC) has been consulted for a compensation application, where an approved determination of native title has been made for all or part of the claim area and the applicant is not the RNTBC.

These Regulations adopt current drafting practices, language and expressions to promote accessibility, ease-of-use and consistency across native title applications.

## **CONSULTATION**

In accordance with the requirements of the *Legislation Act 2003* (Cth), these Regulations have been informed by consultation. In 2017, then Attorney-General, Senator the Hon George Brandis KC, made the *Legislation (Native Title Instruments) Sunset-altering Declaration 2017* under section 51A of the *Legislation Act 2003* (Cth), to align the sunset date of 4 instruments made under the Act, including the 1998 Regulations, in order to facilitate a holistic review. In early 2022, the Attorney-General's Department (the department) commenced consultation on remaking these 4 instruments (together 'the sunset instruments'). The department sought preliminary views from native title stakeholders on whether the sunset instruments remain fit-for-purpose and possible reforms to better support the efficient operation of the native title system.

In October 2022, a native title Expert Technical Advisory Group (ETAG) was convened to provide technical and expert advice to the department on the review and remaking of the sunset instruments. The ETAG comprises representatives from across the native title system, including from the Federal Court of Australia (the Federal Court), National Native Title Tribunal (the Tribunal), Minerals Council of Australia, National Farmers' Federation, National Indigenous Australians Agency, National Native Title Council and its members, and state and territory governments.

In 2023, the department prepared a consultation paper titled *Review of sunseting instruments under the Native Title Act 1993 (Cth) - Reform options* and from 3 March to 3 April 2023 invited public submissions on it.

### ***Changes to reduce complexity, ambiguity and duplication and simply the forms***

#### *Option to include a draft order with applications*

Schedule J of Form 1 and Schedule E of Form 2 in the 1998 Regulations required that an application include a draft order to be sought if the application was unopposed. These Regulations enable applicants to provide a draft order under Schedule R and Schedule E, respectively, with their application. During consultations, the department proposed the option to remove the requirement of a draft order accompanying an application. Some feedback received suggested that a draft order is useful for parties to a proceeding as it provides an important notice to parties, a framework for consideration of extinguishment and connection issues, and has utility as a starting point for discussion by parties of the form a consent determination may take. As such, the provision of a draft order in these forms is optional.

#### *Clarifying use of Form 4*

During consultations, feedback received suggested that stakeholders were unclear whether both a Form 1 and a Form 4 were required to be filed in a situation where compensation was being sought in an area where native title had not already been determined. Subsection 13(2) of the Act requires that, if the Federal Court is making a determination of compensation in accordance with Part 2, Division 5 of the Act, and an approved determination of native title has not previously been made in the relevant area, then the Court must also make a determination of native title.

Notes have been added to the section to clarify the use of Form 4 and explain the implications of not also using a Form 1 to make a claimant application.

#### *Notes in the forms to provide greater clarity*

These Regulations include other notes within the forms to provide greater clarity as to what information an applicant is required to provide, or should ideally provide, with their application. For example, a note has been inserted into Schedule F of Form 1 directing users to section 223 of the Act for a definition of ‘native title’ and ‘native title rights and interests’. Schedule P of Form 1 inserts a note about a certificate from each representative Aboriginal/Torres Strait Islander body who has certified the application and that this certificate is relevant to the Native Title Registrar (the Registrar) when they consider a claim for registration under section 190A of the Act.

These Regulations were drafted in consultation with the Federal Court and Tribunal, as the primary agencies which carry out their functions under the Act in accordance this instrument.

## **IMPACT ANALYSIS**

In consultation with the Office of Impact Analysis (OIA), the department determined that an impact analysis was not required for these Regulations. This is because these Regulations, while having more than a minor impact on individuals, businesses and community organisations, are remade without significant changes (OIA reference: OBPR22-02975).

Details of these Regulations are set out at **Attachment A**.

A Statement of Compatibility with Human Rights is set out at **Attachment B**.

## **NOTES ON SECTIONS**

### **PART 1 – Preliminary**

#### **Section 1 – Name**

This section sets out that the title of the instrument is the *Native Title (Federal Court) Regulations 2024*.

#### **Section 2 – Commencement**

This section sets out when the instrument commences.

#### **Section 3 – Authority**

This section notes that the *Native Title Act 1993* (the Act) authorises the making of this instrument.

#### **Section 4 – Schedule 2**

This section describes the operation of Schedule 2.

#### **Section 5 – Definitions**

This section provides definitions of particular terms used in the instrument and notes definitions provided in the Act for specific terms used in the instrument.

This section also defines ‘compensation application’, ‘compensation claim group’, ‘native title determination application’ and ‘revised native title determination application’.

#### **Section 6 – Forms**

This section provides that a reference to a form by number is a reference to the form so numbered in Schedule 1.

#### **Section 7 – Native title and compensation application forms**

This section provides for the different prescribed forms for different applications under the Act, for the purposes of paragraph 61(5)(a) of the Act.

This section also provides that for the purposes of paragraphs 61(5)(c) and (d) of the Act, the prescribed information and documents are the information and documents required by the prescribed form for the application.

## **Section 8 – Notice of intention to become a party to an application**

This section provides that a Form 5 may be used to give notice to become a party to an application for the purpose of paragraph 84(3)(b) of the Act.

## **Section 9 – Transitional provisions in relation to the commencement of this instrument**

This section provides transitional arrangements for the continuing use of the forms, information and documents prescribed by the *Native Title (Federal Court) Regulations 1998* (1998 Regulations) for 6 months from the commencement of this instrument.

## **SCHEDULE 1 – Forms**

Schedule 1 sets out Forms 1 to 5 for section 7 and 8 of this instrument.

### **Form 1 – Native title determination application – claimant application**

Form 1 is the prescribed form for a claimant application. Claimant application is defined in section 253 of the Act. The form prescribes the information and documents required for a claimant application.

The requirements of Schedules E and G of the 1998 Regulations have been combined at Schedule E.

To support applicants to provide the information required by Schedule F, a note has been inserted which directs users to section 223 of the Act for a definition of ‘native title’ and ‘native title rights and interests’.

Schedule J of the 1998 Regulations, which previously provided for the applicant to include a draft order if the application is unopposed, has been removed. Schedule R, which provides for the applicant to provide any other relevant information, now includes a draft order as an example of the other relevant information that may be provided.

Schedule I, previously Schedule K of the 1998 Regulations, has been amended to include reference to persons or bodies provided funding by the Commonwealth under subsection 203FE(1) of the Act to perform some or all of the functions of a representative Aboriginal/Torres Strait Islander body.

An explanatory note has been added to Schedule P to further explain the information being requested.

To the extent that this form may require the provision of personal information, that information must be handled in accordance with the Federal Court’s obligations under the *Federal Court Act 1976* (Cth). The Federal Court may require this information to serve summons and send documents and notifications in order to carry out its functions under the Act. The information is therefore

required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

Furthermore, to the extent that this form may require the provision of personal information for the purposes of the Native Title Registrar (the Registrar) applying the registration test to a claim or performing notification functions under sections 66 and 66A of the Act, that information must be handled in accordance with the Registrar's obligations under the *Privacy Act 1988* (Cth). The Registrar may require this information to carry out its functions under the Act. The information is therefore required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

## **Form 2 – Native title determination application – non-claimant application**

Form 2 is the prescribed form for a non-claimant application. Non-claimant application is defined in section 253 of the Act. The form prescribes the information and documents required for a non-claimant application.

Schedule E, which previously provided for the applicant to include a draft order if the application is unopposed, has been combined with Schedule F, which previously allowed for the applicant to provide any other relevant information with their application. Schedule E of these Regulations now provides for the applicant to include any other relevant information, for example a draft order.

To the extent that this form may require the provision of personal information, that information must be handled in accordance with the Federal Court's obligations under the *Federal Court Act 1976* (Cth). The Federal Court may require this information to serve summons and send documents and notifications in order to carry out its functions under the Act. The information is therefore required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

Furthermore, to the extent that this form may require the provision of personal information for the purposes of the Registrar performing notification functions under section 66 of the Act, that information must be handled in accordance with the Registrar's obligations under the *Privacy Act 1988* (Cth). The Registrar may require this information to carry out its functions under the Act. The information is therefore required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

### **Form 3 – Revised native title determination application**

Form 3 is the prescribed form for a revised native title determination application as mentioned in section 61(1) of the Act. The form prescribes the information and documents required for this application.

Schedule D has been amended to include reference to persons or bodies provided funding by the Commonwealth under subsection 203FE(1) of the Act to perform some or all of the functions of a representative Aboriginal/Torres Strait Islander body.

To the extent that this form may require the provision of personal information, that information must be handled in accordance with the Federal Court's obligations under the *Federal Court Act 1976* (Cth). The Federal Court may require this information to serve summons and send documents and notifications in order to carry out its functions under the Act. The information is therefore required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

Furthermore, to the extent that this form may require the provision of personal information for the purposes of the Registrar performing notification functions under section 66 of the Act, that information must be handled in accordance with the Registrar's obligations under the *Privacy Act 1988* (Cth). The Registrar may require this information to carry out its functions under the Act. The information is therefore required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

### **Form 4 – Compensation application**

Form 4 is the prescribed form for a compensation application as mentioned in section 61(1) of the Act. The form prescribes the information and documents required for a compensation application.

Subsection 13(2) of the Act requires that if the Federal Court is making a determination of compensation in accordance with Division 5 of the Act, and an approved determination of native title has not previously been made in the relevant area, then the Court must also make a determination of native title. However, where an approved determination of native title has not previously been made in all or part of the application area, the Native Title Registrar is only required to consider a claimant application for registration under section 190A of the Act. A claimant application is made with Form 1.

The requirements of Schedules E and H of the 1998 Regulations have been combined into Schedule E.



Schedule F has been amended to include reference to persons or bodies provided funding by the Commonwealth under subsection 203FE(1) of the Act to perform some or all of the functions of a representative Aboriginal/Torres Strait Islander body.

To the extent that this form may require the provision of personal information, that information must be handled in accordance with the Federal Court's obligations under the *Federal Court Act 1976* (Cth). The Federal Court may require this information to serve summons and send documents and notifications in order to carry out its functions under the Act. The information is therefore required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

### **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 for the purposes of paragraph 84(3)(b) of the Act.

The Form requires the person giving the notice to provide information about the nature of their interests in the application area. If the person seeking to become a party asserts that they hold native title rights and interests in the claim area, they must identify that interest. This information will assist consideration of the application of paragraph 84(3)(a) of the Act.

To the extent that this form may require the provision of personal information, that information must be handled in accordance with the Federal Court's obligations under the *Federal Court Act 1976* (Cth). The Federal Court may require this information to serve summons and send documents and notifications in order to carry out its functions under the Act. The information is therefore required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

## **SCHEDULE 2 - Repeals**

### ***Native Title (Federal Court) Regulations 1998***

#### **Item 1 – The whole of the instrument**

This Schedule repeals the 1998 Regulations.

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## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*

### ***Native Title (Federal Court) Regulations 2024***

This Disallowable Legislative Instrument, the *Native Title (Federal Court) Regulations 2024* (the Regulations), is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*.

### **Overview of the Regulations**

The *Native Title Act 1993 (Cth)* (the Act) provides for the recognition and protection of native title, and establishes ways in which future dealings affecting native title may proceed. The Act also provides certainty as to the effect of native title on other interests in land and waters.

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

The Act prescribes information and documents to accompany applications made under subsection 61(1). These Regulations prescribe the forms for the following applications:

- claimant application for a determination of native title (Form 1)
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These regulations also prescribe a form (Form 5) that may be used to provide notice of intention to become a party under paragraph 84(3)(b) of the Act.

In repealing and replacing the 1998 Regulations, these Regulations update, simplify and clarify the forms, including by:

- removing unnecessary or duplicative requirements
- further clarifying the link between the information to be included in a form and the requirements of the Act, including by providing references to specific subsections and paragraphs
- including notes to further explain how specific forms interact with different processes under the Act
- updating contact requirements

- noting where information requested by Form 4 may be able to be provided by reference to an approved determination of native title, and
- requiring the applicant to indicate whether the relevant registered native title body corporate (RNTBC) has been consulted for a compensation application, where an approved determination of native title has been made for all or part of the claim area and the applicant is not the RNTBC.

These Regulations adopt current drafting practices, language and expressions to promote accessibility, ease-of-use and consistency across native title applications.

***Changes to reduce complexity, ambiguity and duplication and simply the forms***

*Option to include a draft order with applications*

Schedule J of Form 1 and Schedule E of Form 2 in the 1998 Regulations required that an application include a draft order to be sought if the application was unopposed. These Regulations enable applicants to provide a draft order under Schedule R and Schedule E, respectively, with their application. During consultations, the Attorney-General's Department (the department) proposed the option to remove the requirement of a draft order accompanying an application. Some feedback received suggested that a draft order is useful for parties to a proceeding as it provides an important notice to parties, a framework for consideration of extinguishment and connection issues, and has utility as a starting point for discussion by parties of the form a consent determination may take. As such, the provision of a draft order in these forms is optional.

*Clarifying use of Form 4*

During consultations, feedback received suggested that stakeholders were unclear whether both a Form 1 and a Form 4 were required to be filed in a situation where compensation was being sought in an area where native title had not already been determined. Subsection 13(2) of the Act requires that, if the Federal Court is making a determination of compensation in accordance with Division 5 of the Act, and an approved determination of native title has not previously been made in the relevant area, then the Court must also make a determination of native title.

Notes have been added to the section to clarify the use of Form 4 and explain the implications of not also using a Form 1 to make a claimant application.

### *Notes in the forms to provide greater clarity*

These Regulations include other notes within the forms to provide greater clarity as to what information an applicant is required to provide, or should ideally provide, with their application. For example, a note has been inserted into Schedule F of Form 1 directing users to section 223 of the Act for a definition of ‘native title rights and interests’. Schedule P of Form 1 inserts a note about a certificate from each representative Aboriginal/Torres Strait Islander body who has certified the application and that this certificate is relevant to the Native Title Registrar (the Registrar) when they consider a claim for registration under section 190A of the Act.

### **Human rights implications**

This instrument engages the following rights and freedoms:

- *the right to self-determination* in Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- *the right to enjoy and benefit from culture* in Article 15 of the ICESCR and Article 27 of the ICCPR
- *the rights to equality and non-discrimination* in Article 26 of the ICCPR, Articles 2 and 3 of the ICESCR and Articles 1, 2 and 5(d)(v), 5(vi) and 5(e)(vi) of the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD)
- *the right to equality before courts and tribunals and the right to a fair trial and public hearing by a competent, independent and impartial tribunal* in Article 14(1) of the ICCPR
- *the right to privacy* in Article 17 of the ICCPR.

### *The right to self-determination and the right to enjoy and benefit from culture*

The right to self-determination is contained in Article 1 of the ICCPR and Article 1 of the ICESCR.<sup>1</sup> These articles both uphold the collective right to freely determine and maintain cultural, economic, social and political development. Article 27 of the ICCPR and Article 15 of the ICESCR entrench the right to enjoy and benefit from culture.<sup>2</sup> While Article 27 of the ICCPR protects the right of those belonging to minorities to enjoy their own culture, Article 15 of the ICESCR protects the right to take part in cultural life.

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<sup>1</sup> *International Covenant on Civil and Political Rights* (New York, 16 December 1966) [1980] ATS 23 [REPRINT], UNTS 999 p.171 article 1; *International Covenant on Economic, Social and Cultural Rights* (New York, 16 December 1966) [1976] ATS 5, UNTS 993 p.3 article 1.

<sup>2</sup> *International Covenant on Civil and Political Rights* article 27; *International Covenant on Economic, Social and Cultural Rights* article 15.

The Act, and the 1998 Regulations, provide an avenue for native title rights and interests to be recognised, exercised and enjoyed under Australian law, and encourage the promotion of collective cultural rights. These rights and interests derive from traditional laws and customs of each group, and may include traditional activities such as the right to live on land and the right to fish, hunt and gather resources.

The forms for native title determination and compensation applications in these Regulations facilitate Aboriginal and Torres Strait Islander people seeking recognition of their native title rights under Australian law and seeking compensation for the loss or impairment of those rights. These Regulations thereby help to promote the rights to self-determination and to enjoy and benefit from culture.

Additionally, as one of many interfaces between native title parties and the native title system, these forms should be as clear and accessible as possible. New notes in these forms will assist to provide clarity about the information and details required to be included in each application, and will assist users to more easily navigate the forms to initiate processes to have their native title rights and interests recognised and any loss or impairment of the native title compensated.

*The right to equality and non-discrimination, the rights to equality before courts and tribunals, and a fair trial and public hearing by a competent, independent and impartial tribunal, and the right to effective remedy*

Article 26 of the ICCPR and Articles 2 and 3 of the ICESCR protect the right of equality and are complemented by Articles 1, 2 and 5(d)(v), 5(d)(vi) and 5(e)(vi) of the CERD.<sup>3</sup> Collectively these articles enshrine the rights of equality and non-discrimination. Article 14(1) of the ICCPR enshrines the rights to equality before courts and tribunals, and a fair trial and public hearing by a competent, independent and impartial tribunal.<sup>4</sup>

Article 2(3) of the ICCPR enshrines the right to an effective remedy, complemented by Article 6 of the CERD which protects the right to an effective remedy for acts of discrimination contrary to that Convention.<sup>5</sup> Collectively these rights recognise the right to appropriate reparation where rights have been breached.

The forms provided for in the Regulations, and in particular the changes made to promote accessibility, ease-of-use and consistency across native title applications facilitate access to the

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<sup>3</sup> *International Covenant on Civil and Political Rights* article 26; *International Covenant on Economic, Social and Cultural Rights* articles 2 and 3; *International Convention on the Elimination of all Forms of Racial Discrimination* (New York, 7 March 1966) [1975] ATS 40, UNTS 660 p.195 articles 1, 2 and 5.

<sup>4</sup> *International Covenant on Civil and Political Rights* article 14(1).

<sup>5</sup> *International Covenant on Civil and Political Rights* article 2(3); *International Convention on the Elimination of all Forms of Racial Discrimination* article 6.

recognition and compensation processes available under the Act and thereby contribute to equality before the law and the right to an effective remedy.

*The right to privacy.*

The right to privacy is contained in Article 17 of the ICCPR and recognises that individuals have the right to be free from unlawful or arbitrary interference with their family, home, privacy or correspondence.<sup>6</sup> This right may be subject to permissible limitations where limitations on this right are provided by law and are non-arbitrary. In order to be non-arbitrary, any limitations on this right must be reasonable, necessary and proportionate, must seek to achieve a legitimate purpose and must be in accordance with the provisions, objectives and aims of the ICCPR and be reasonable in the particular circumstances.

Forms 1 to 5 of these Regulations request a wide variety of information, predominantly as required by the Act to be provided in support of certain applications under the Act. Some of this information is likely to be highly sensitive for applicants, including as it may relate to their native title rights and interests, and negative effects on those rights and interests for which compensation is sought. Additionally, each of Forms 1 to 5 of these Regulations requires a name and contact information to be included.

This information is required for a legitimate purpose, and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

The Federal Court requires this information to progress the applications, or assess the notice given, and to serve summons, and send documents and notifications to carry out its functions. Further, these provisions enable parties to be contacted in a number of ways to ensure they can participate in proceedings. Native title parties may live in circumstances that limit the forms of communication they can use at a given time. These sections provide for the Federal Court to collect information to enable the Federal Court to contact native title holders in a range of ways which will enhance their access to the native title system.

Information asked for by Form 1 is also used for the purpose of the Registrar considering registration of a claimant application under section 190A of the Act and for the purpose of notification under sections 66 and 66A of the Act. Registration of a claim results in additional statutory rights for native title holders to be notified of, comment on or negotiate over proposed acts that may affect their native title rights and interests. The information is therefore obtained for a legitimate purpose, and the request that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose. Information about registered claims is available on the Register of Native

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<sup>6</sup> *International Covenant on Civil and Political Rights* article 17.

Title Claims. While the Register of Native Title Claims is publicly available on the Tribunal website, the Registrar has the power to keep particular information from the public if it would not be in the public's interest for it to be publicly available. Under the Act, the Registrar must take into account the cultural and customary concerns of Aboriginal and Torres Strait Islander people in determining whether to would be in the public interest to make the information available to the public.

Form 5 requires details which may be sensitive for the applicant including details about native title rights and interests claimed to be held and the basis upon which those rights and interests are claimed to be held. The information is required for a legitimate purpose – to enable the Federal Court to assess the notice of intention to become a party given in the form – and the requirement that sensitive information be provided is a reasonable, necessary and proportionate means of achieving that purpose.

There are existing protections in place with respect to the Registrar, Tribunal and Federal Court's handling of personal information. As the responsible authority for the Tribunal, the Registrar must act in accordance with the Australian Privacy Principles when handling personal information. While the Federal Court is exempt from the *Privacy Act 1988* (Cth) in relation to records, documents and other materials relating to court proceedings, it must deal with personal information in accordance with the *Federal Court of Australia Act 1976* (Cth), and the *Federal Court Rules 2011* (Cth).

These Regulations engage, and limit, the right to privacy to the extent that the Federal Court, Registrar and Tribunal collect, use, store and share this personal and sensitive information. This limitation to the right to privacy is justified as this information is required for legitimate purposes – namely to enable the Federal Court, Registrar and Tribunal to carry out their statutory functions under the Act – and the requirement that personal information be provided is a reasonable, necessary and proportionate means of achieving that purpose. For this reason, this limitation is not inconsistent with the right to privacy set out in Article 17 of the ICCPR.

## **Conclusion**

These Regulations are compatible with human rights because they promote and enhance human rights. To the extent that these Regulations may limit human rights, those limitations are reasonable, necessary and proportionate to achieve the objectives and statutory functions of the Tribunal and Federal Court processing and progressing native title determination and compensation applications.