



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

**Statutory Rules No. 272, 1998**

made under the

*Native Title Act 1993*

## **Compilation No. 2**

**Compilation date:** 25 March 2021

**Includes amendments up to:** F2021L00273

**Registered:** 20 April 2021

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Native Title (Federal Court) Regulations 1998* that shows the text of the law as amended and in force on 25 March 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## 1 Name of Regulations

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

## 7 Application of amendments made by the *Native Title Legislation Amendment (2021 Measures No. 1) Regulations 2021*

Forms 1, 3 and 4, as inserted by the *Native Title Legislation Amendment (2021 Measures No. 1) Regulations 2021*, apply in relation to any application made after the commencement of Schedule 1 to that instrument.

## Schedule—Forms

(regulations 4 and 6)

### Form 1—Native title determination application—claimant application

Note: See 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 stating the following matters:
- (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;
  - (b) that the applicant believes that none of the area covered by the application is also covered by an approved determination of native title;
  - (c) that the applicant believes that all of the statements made in the application are true;
  - (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;
  - (e) the 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;
  - (f) if there are no conditions under section 251BA of the Act on the authority that relate to the making of the application—that there are no such conditions;
  - (g) if there are any conditions under section 251BA of the Act on the authority that relate to the making of the application—that the conditions have been satisfied and how the conditions have been satisfied.

#### 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, e.g. 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 by or on behalf of the native title claim group 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 factual basis on which it is asserted that the native title rights and interests claimed exist and in particular 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 HA [see Act, s 62]*

Details of any notifications under paragraph 24MD(6B)(c) of the Act, of which the applicant is aware, that have been given and that relate to the whole or part of the area.

*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 IA [see Act, s 62]*

Details of any conditions under section 251BA of the Act on the authority of the applicant to make the application and to deal with matters arising in relation to it.

*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, 47C, 61A and 62]*

- (1) 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 in relation to which the operation of section 47C of the Act (national parks etc.) has been agreed to in writing in accordance with paragraph 47C(1)(b) of the Act; and
  - (e) any area mentioned in paragraph (a), (b), (c) or (d) over which the extinguishment of native title is required by section 47, 47A, 47B or 47C of the Act to be disregarded.
- (2) If the operation of section 47C of the Act (national parks etc.) has been agreed to in writing in accordance with paragraph 47C(1)(b) of the Act in relation to the whole or any part of the area covered by the application, a copy of the agreement and, if there is an agreement under subsection 47C(5) of the Act, that agreement.

*[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) a statement that either:
    - (i) there are no conditions under section 251BA of the Act on the authority that relate to the making of the application; or
    - (ii) any conditions under section 251BA of the Act on the authority that relate to the making of the application have been satisfied; and
  - (c) the grounds on which the Registrar should consider that the statements mentioned in paragraph (a) and, if applicable, subparagraph (b)(ii) are correct.

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

*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]*.

**C. Email address for notices other than in relation to this application**

The applicant consents to all notices under the Act (including future act notices) being given to the applicant by email to the email address specified in Part B.

*[Delete Part C if the applicant does not consent, or does not provide an email address for service.]*

## **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

Note: See 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 Act, for revocation or variation of an approved determination of native title, on the grounds set out in subsection 13(5) of the Act.

### A. Details of the claim

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, e.g. 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 GA [see Act, ss 13, 47C and 62]*

If the determination covers an area in relation to which the operation of section 47C of the Act (national parks etc.) has been agreed to in writing in accordance with paragraph 47C(1)(b) of the Act, a copy of the agreement and, if there is an agreement under subsection 47C(5) of the Act, that agreement.

*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

Note: See 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 Act, for a determination of compensation.

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

- (a) that the applicant believes that native title rights and interests exist or have existed in relation to the area covered by the application;
- (b) that the applicant believes that all of the statements made in the application are true;
- (c) if the application is authorised by a compensation claim group—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;
- (d) if the application is authorised by a compensation claim group—the 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;
- (e) if the application is authorised by a compensation claim group and there are no conditions under section 251BA of the Act on the authority that relate to the making of the application—that there are no such conditions;
- (f) if the application is authorised by a compensation claim group and there are any conditions under section 251BA of the Act on the authority that relate to the making of the application—that the conditions have been satisfied and how the conditions have been satisfied;
- (g) if the application is made by a registered native title body corporate—either that the applicant holds (or is an agent prescribed body corporate in relation to) the native title rights and interests, or that the area is within the external boundary of the area of land or waters covered by an approved determination of native title under which the applicant holds (or is an agent prescribed body corporate in relation to) native title rights and interests.

### 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, e.g. 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 by or on behalf of the native title claim group 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 KA [see Act, s 62]*

Details of any notifications under paragraph 24MD(6B)(c) of the Act, of which the applicant is aware, that have been given and that relate to the whole or part of the area.

*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 LA [see Act, s 62]*

Details of any conditions under section 251BA of the Act on the authority of the applicant to make the application and to deal with matters arising in relation to it.

*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]*.

**C. Email address for notices other than in relation to this application**

The applicant consents to all notices under the Act (including future act notices) being given to the applicant by email to the email address specified in Part B.

*[Delete Part C if the applicant is a registered native title body corporate, or does not consent, or does not provide an email address for service.]*

## **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:

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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#### Endnote 3—Legislation history

<b>Number and year</b>	<b>FRLI registration or gazettal</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
1998 No. 272	1 Sept 1998	30 Sept 1998	
2007 No. 250	24 Aug 2007 ( <i>see</i> F2007L02586)	1 Sept 2007	—

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Native Title Legislation Amendment (2021 Measures No. 1) Regulations 2021	22 Mar 2021 (F2021L00273)	Sch 1 (items 1–3): 25 Mar 2021 (s 2(1) item 1)	—

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
r 2.....	rep LA s 48D
r 7.....	ad F2021L00273
<b>Schedule</b>	
Schedule.....	am 2007 No 250; F2021L00273