



Native Title (Federal Court) Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 September 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Mark Dreyfus KC
Attorney-General

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1 Name

This instrument is the *Native Title (Federal Court) Regulations 2024*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2024.	1 October 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Native Title Act 1993*.

4 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) approved determination of native title;
- (b) claimant application;
- (c) native title claim group;
- (d) non-claimant application.

- (1) In this instrument:

Act means the *Native Title Act 1993*.

compensation application means an application (as mentioned in subsection 50(2) of the Act) made under Division 1 of Part 3 of the Act for a determination of compensation.

compensation claim group, in relation to a compensation application, means the compensation claim group mentioned in relation to the application in the table in subsection 61(1) of the Act.

native title determination application means an application (as mentioned in subsection 13(1) of the Act) made under Division 1 of Part 3 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: A native title determination application may be a claimant application or a non-claimant application.

revised native title determination application means an application (as mentioned in subsection 13(1) of the Act) made under Division 1 of Part 3 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.

6 Forms

In this instrument, a reference to a form by number is a reference to the form so numbered in Schedule 1.

7 Native title and compensation application forms

- (1) For the purposes of paragraph 61(5)(a) of the Act, the prescribed form of an application is:
 - (a) for a claimant application for a determination of native title—Form 1; or
 - (b) for a non-claimant application for a determination of native title—Form 2; or
 - (c) for a revised native title determination application—Form 3; or
 - (d) for a compensation application—Form 4.

Note: For the definitions of *claimant application* and *non-claimant application*, see section 253 of the Act.

- (2) For the purposes of paragraph 61(5)(c) of the Act, the prescribed information for an application is the information that is required to be included in the application by the prescribed form of the application (see subsection (1)).
- (3) For the purposes of paragraph 61(5)(d) of the Act, the prescribed documents for an application are the documents that are required to accompany the application by the prescribed form of the application (see subsection (1)).

8 Notice of intention to become a party to an application

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

9 Transitional provisions in relation to the commencement of this instrument

- (1) During the 6-month period (the ***transitional period***) beginning on the commencement of this instrument, an application under Division 1 of Part 3 of the Act may be made in the form, contain the information, and be accompanied by the documents, prescribed by:
 - (a) regulations 5 and 6 of the *Native Title (Federal Court) Regulations 1998* (the ***old regulations***); or
 - (b) sections 7 and 8 of this instrument.

-
- (2) For the purposes of paragraph (1)(a), despite the repeal of the old regulations by this instrument, regulations 5 and 6 of the old regulations continue to apply, during the transitional period, in relation to applications made under Division 1 of Part 3 of the Act.

Schedule 1—Forms

Note: See sections 7 and 8.

Form 1—Native title determination application—claimant application

Note: See paragraph 7(1)(a).

Native Title Act 1993

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

Note 1: This form is to be used for a claimant application. For the definition of ***claimant application***, see section 253 of the Act.

Note 2: Paragraph 62(1)(a) of the Act requires this application to be accompanied by an affidavit sworn by the applicant stating the following matters (which are set out in subsection 62(1A) of the Act):

- (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) and 251B*].
3. The schedules to this application contain the following information:

Schedule A [see Act, s 61(4)]

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 one of those persons.

Schedule B [see Act, s 62(2)(a)]

A written description that enables the boundaries of the following to be identified:

- (a) the area covered by the application;
- (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(2)(b)]

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

Schedule D [see Act, s 62(2)(c)]

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(2)(d) and (f)]

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.

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

Schedule F [see Act, s 62(2)(e)]

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.

Note: For the definition of the expressions **native title** and **native title rights and interests**, see section 223 of the Act.

Schedule G [see Act, s 62(2)(g)]

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 GA [see Act, s 62(2)(ga)]

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 H [see Act, s 62(2)(h)]

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 HA [see Act, s 62(2)(i)]

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 I

The name of:

- (a) each representative Aboriginal/Torres Strait Islander body for the area covered by the application; or
- (b) each person or body provided funding under subsection 203FE(1) of the Act to perform all or specified functions of a representative body mentioned in paragraph (a) in respect of the area covered by the application.

Schedule J [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 L [see Act, s 62(1)(c)(i) and (ii)]

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.

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 M [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 N [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 O [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 P [see Act, s 190C]

- (1) If the application has been certified by each representative Aboriginal/Torres Strait Islander body, a copy of the certificate.

Note: Part 11 of the Act concerns the certification function of a representative Aboriginal/Torres Strait Islander body. A copy of the certificate, as mentioned in paragraph 190C(4)(a) of the Act, is relevant to the Native Title Registrar considering the claim for registration under section 190A of the Act.

- (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 Q [see Act, s 64]

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

Schedule R

Any other relevant information that the applicant wants to provide (for example, a draft of the order sought if the application is unopposed).

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

Note: See paragraph 7(1)(b).

Native Title Act 1993

The application of [*name of applicant*]

Note: This form is to be used for a non-claimant application. For the definition of **non-claimant application**, see section 253 of the Act.

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

A written description that enables the boundaries of the following to be identified:

- (a) the area covered by the application;
- (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

Any other relevant information that the applicant wants to provide (for example, a draft of the order sought if the application is unopposed).

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 7(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

A written description that enables the boundaries of the following to be identified:

- (a) the area covered by the application;
- (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:

- (a) each representative Aboriginal/Torres Strait Islander body for the area covered by the application; or
- (b) each person or body provided funding under subsection 203FE(1) of the Act to perform all or specified functions of a representative body mentioned in paragraph (a) in respect of the area covered by the application.

Schedule E

A copy of the approved native title determination.

Schedule F [see Act, s 13(5)(a)]

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(5)(b)]

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

Schedule GA [see Act, ss 13(5)(c), 47C and 62(7)]

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 (for example, a draft of the order sought).

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 7(1)(d).

Native Title Act 1993

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

- Note 1: This form must be used for a compensation application, whether or not an approved determination of native title has previously been made in relation to the whole or part of the area concerned. If an approved determination has not previously been made, the Federal Court must also make a current determination of native title in relation to that area, as at the time at which the determination of compensation is made: see subsection 13(2) of the Act.
- Note 2: The Native Title Registrar is only required to consider a claimant application (made with Form 1) for the purposes of accepting a claim for registration on the Register of Native Title Claims under section 190A of the Act.
- Note 3: Paragraphs 62(3)(a) and (5)(a) (as applicable) 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)*].

If the applicant is not a registered native title body corporate and an approved determination has been made for the whole or part of the claim area, indicate whether the registered native title body corporate has been consulted about the application.

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3. The schedules to this application contain the following information or documents.

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 one of those persons; or
- (b) the name of the registered native title body corporate.

Schedule B [see Act, s 62(2)(a)]

A written description that enables the boundaries of the following to be identified:

- (a) the area covered by the application;
- (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(2)(b)]

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

Schedule D [see Act, s 62(2)(c)]

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(2)(d) and (f)]

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.

Note: This information may be provided in a copy of an approved determination of native title made in relation to the whole or part of the area concerned (if any).

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

Schedule F

The name of:

- (a) each representative Aboriginal/Torres Strait Islander body for the area covered by the application; or
- (b) each person or body provided funding under subsection 203FE(1) of the Act to perform all or specified functions of a representative body mentioned in paragraph (a) in respect of the area covered by the application.

Schedule G [see Act, s 62(2)(e)]

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

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 I

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

Schedule J [see Act, s 62(2)(g)]

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 JA [see Act, s 62(2)(ga)]

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 K [see Act, s 62(2)(h)]

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 KA [see Act, s 62(2)(i)]

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 L

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 M [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 N [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 O [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 P

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

Note: See section 8.

Native Title Act 1993

To:

The District Registrar, Federal Court of Australia

I:

Name of person giving notice:

Address of person giving notice:

Email address (if any) of person giving notice:

Address for service of person 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 the following:

1. *whether the person claims to hold native title rights and interests to the whole or any part of the area covered by the application;*
2. *if the person claims to hold native title rights and interests to a part of the area covered by the application—identify the part of the area;*
3. *how the native title rights and interests that the person claims to hold will be affected by a determination of the application.*
4. *if the person is not claiming to hold native title rights or interests in the whole or part of the area covered by the application—describe the nature of your interest/s and the manner in which it/they may be affected by a native title determination.*

Documentary evidence should be supplied. For example, if you hold a lease or licence in respect of the claim area please attach to this form, a copy or photocopy of that lease or licence. Identify the type of interest and its location in the claim area.

Date:

Signature of person giving notice:

Schedule 2—Repeals

Native Title (Federal Court) Regulations 1998

1 The whole of the instrument

Repeal the instrument.