

# Amending (changing) a claimant application

The Federal Court of Australia is responsible for the management and determination of all claimant applications. If you wish to make any amendments to a claimant application, you can only do this by filing a notice of motion in the court asking for the court's consent to make the amendments (known as seeking leave in the court) along with an affidavit that explains why you want to amend the application. A Minute of Proposed Amended Native Title Determination Application setting out the proposed amended Form 1 should also be filed.

See the Federal Court's [website](#) for more information about how to do this.

## What happens to an amended application?

Once an amended application is filed in the Federal Court, it is sent to the Native Title Registrar (the Registrar) of the Tribunal. The Registrar must then decide whether or not to accept the claim in the amended application for registration on the Register of Native Title Claims under section 190A of the *Native Title Act 1993* (Cwlth) (the Act).

In most cases, this will involve the Registrar applying the [registration test](#) to the amended claim. Some amendments can be made without triggering the reapplication of the registration test. These are set out below.

## Registration testing of amended claimant applications

If the Registrar decides that the claim made in the amended application satisfies the conditions for registration (because it meets all the conditions of the registration test), the claim is registered on the Register of Native Title Claims.

Once the claim is registered, the members of the native title claim group get some important rights related to [future acts](#) in the application area, such as the right to negotiate with others about the grant of some mining tenements in the area and certain other procedural rights.

If your amended application has to be re-tested and it does not meet all of the registration conditions set out in the Act, then the Registrar must not accept it for registration. This means that if the claim was on the Register of Native Title Claims before the application was amended, it must be removed.

In addition, if all avenues of review have been exhausted and your application is still not registered, the Federal Court may dismiss your application if it is satisfied that:

- your application has not been amended since it was considered by the Registrar and is not likely to be amended in a way that would lead to a different outcome and
- in the opinion of the court, there is no other reason why your application should not be dismissed.

The following options are available, if the claim in your amended application is not accepted for registration. You may:

- further amend your application in the Federal Court, in which case the Registrar must consider the claim in that amended application for registration
- apply to the Tribunal to have the claim **reconsidered** for registration
- seek a review of the registration decision by the Federal Court.

### **Exceptions to registration testing**

The claim in an amended application will not have to be registration tested if the original claim is already registered on the Register of Native Title Claims and the only effect of the amendment is to do one or more of the following (see section 190A(6A) of the Act):

- i. reduce the area covered by the application (but so long as it is still possible to identify the application area with reasonable certainty)
- ii. remove a native title right or interest from those claimed in the application
- iii. change the name in the application of the representative body(ies) recognised for the area covered by the claim, where the body's name has been changed or the body has been replaced with another body
- iv. change the name in the application of a body performing the functions of a representative body for the part or all of the area, where the body's name has been changed or the body has been replaced with another body
- v. alter the address for service of the applicant.

All amendments to registered applications are assessed on a case-by-case basis to see if the registration test has to be applied to the claim in the amended application.

If there has been any change to the area description to reduce the area covered by the application, the Tribunal carries out a geospatial assessment. The Registrar will then consider whether the other amendments to the application (if any) are made as a result of the change to the area description, such as boundary changes or changes to the currency of certain information in the application (for example, updating future act notice information or providing current information about overlapping applications). If so, the registration test will not be applied to the claim in the amended application.

The Registrar may also decide that the registration test does not need to be applied in the case of:

- minor amendments such as amendments to fix typographical errors (where there is no change to the meaning) or

- amendments to update the nature of an area description (for example, where an area has been subdivided and renamed, but there is no change to the actual application area) or
- where changes are made to a part of the application that does not affect the registration test conditions (for example, changing a draft order for a consent determination).

The Registrar will not provide advice about whether a proposed amendment will or will not trigger the registration test. However, you may choose to make a submission to the Registrar about whether you think the amended application meets one of the exceptions to registration testing and why.

If the Registrar decides that the amendment is an exception set out in s. 190A(6A), the Registrar must accept the amended claim for registration, and the information on the Register of Native Title Claims is updated to reflect the amendments.

There is one other situation where an application can be amended without triggering the test. This is when the reason for amending a registered application is that an order is made by the Federal Court under section 87A, which deals with consent determinations over part of the area covered by the application. In this case, the Registrar updates the information on the Register of Native Title Claims to reflect the amendment to the claim area.

Claimant applications can be amended while they are being tested for registration, being reconsidered by a member of the Tribunal, or where a registration test decision is being reviewed by the Federal Court.

### **Replacing the applicant**

One or more members of a native title claim group can apply to the Federal Court to replace the applicant in a native title determination application (see section 66B of the Act). The members of the claim group who replace an existing applicant must be able to show that they are authorised by the claim group to make the native title determination application. A person who is, either alone or jointly with others, 'the applicant' may be replaced if they:

- consent to being replaced or removed
- have died or become incapacitated
- are no longer authorised by the claim group to make the application and to deal with matters arising in relation to it or
- have exceeded the authority given to them by the claim group to make the application and to deal with matters arising in relation to it.

If the Registrar receives a section 66B order from the Federal Court, the Registrar must update the Register of Native Title Claims to reflect the change in applicant details and does not re-apply the registration test to the application.

On the other hand, if the applicant details are amended in the Federal Court without a section 66B order and the Registrar is given a copy of the amended application under s. 64(4) the Registrar must apply the registration test to the claim in the amended application (see s. 190A(1)).

### **Information and assistance**

If you are an applicant, and want to amend your application, you can ask the Federal Court for assistance. The Federal Court has registries in all capital cities. Staff of the Court can assist with procedural information about filing an amendment claimant application. The Federal Court cannot provide legal advice.

The National Native Title Tribunal may also provide information and assistance about native title processes.

Tribunal members, the Registrar and employees of the Tribunal cannot give legal advice about how to amend an application. Nor can they amend an application, or fill out the application form, for you. They can provide information about the requirements in the Act for the registration of claimant applications and other appropriate assistance.

For more information about the conditions for registration see *Native Title Claimant Applications: a guide to understanding the requirements of the registration test*.

For information about assistance available from the Tribunal see *Assistance Guidelines*.