

DIRECTION OF THE NATIONAL NATIVE TITLE TRIBUNAL

1. This Direction replaces the direction issued on 24 March 2020.
2. This Direction applies to any proceeding currently before the Tribunal, which:
 - was commenced on or before the date of this Direction; or
 - is commenced on or prior to 30 June 2020,

by objection filed pursuant to s 32 of the *Native Title Act 1993* (Cth) (the “Native Title Act”), or by application pursuant to s 35 of the *Native Title Act* (in each case, the “relevant proceeding”).

3. This Direction recognizes the need to modify Tribunal practices, having regard to the potentially adverse effects of COVID-19 on the health of our stakeholders, particularly indigenous communities.

4. This Direction may be withdrawn or amended at any time.

5. Where a native title party to a relevant proceeding is required by a direction of the Tribunal to take a step in that proceeding, the native title party will be excused from compliance with such requirement if, on or before the due date for taking such step:

(a) the native title party (or its legal adviser) provides to the Tribunal, a written statement to the effect that the native title party (or its legal adviser) considers that taking the said step is not reasonably practicable, save by action that may offend against legislation of the Commonwealth of Australia or the State of Western Australia and/or any regulation or similar delegated legislation made pursuant thereto; or

(b) where an officer or employee of the Commonwealth or the said State has given advice to a native title party (or its legal adviser) in the course of that officer or employee’s duty, the native title party (or its legal adviser) supplies to the Tribunal a statement in writing to the effect that in the view of the said native title party (or its legal adviser), taking the said step would be inconsistent with the adoption of such advice, provided that the identity of the officer or employee giving the advice and the details of such advice are also provided to the Tribunal. Where such advice is addressed to the general public, it will be inferred that the relevant native title party or legal adviser has become aware of it, and has acted upon it.

6. Where a native title party (or its legal adviser) has given a letter as described in para 5 above, but subsequently forms the opinion that the relevant step may now be taken without offending against any statute, regulation, or other delegated legislation, or acting in disregard of advice as described above, the native title party (or its legal adviser) should, as soon as possible, send to the Tribunal a statement to that effect.

7. This Direction relates only to relevant proceedings concerning land and waters within the boundaries of the State of Western Australia.

8. A statement provided for the purposes of this Direction may relate to more than one relevant proceeding, provided that it clearly identifies the basis for each relevant opinion.

9. A copy of any statement pursuant to this Direction, sent by a native title party (or its legal adviser) to the Tribunal, is to be provided to any other party to the relevant proceeding at the same time as it is sent to the Tribunal.

10. After the date of this Direction and before 1 June 2020, the Tribunal will not generally give directions with respect to proceedings commenced by objection or application:

(a) other than on the application of a party; or

(b) where such proceedings relate to a future act for which the closing date for the lodgment of objections is on or after 1 June 2020.

11. Where a native title party has complied with either para 5(a) or 5(b) of this Direction, any other party to the relevant proceedings will be excused from compliance with any direction of the Tribunal in that proceeding.

John Dowsett

President

Helen Shurven

Member

Nerida Cooley

Member

22 May 2020