



Information sheet for applicants

**How to complete a Future Act Determination Application
(Form 5)**

When to use the Form 5

An application for a determination that a future act should or should not be done, and if done, on what conditions, can be made where:

- a notice of intention to do a future act has been given;
- at least six (6) months have passed since the notification day; and
- the negotiation parties, including the native title parties, the Government party, and any grantee parties, have not been able to reach agreement about the doing of the act.

Any one or more of the negotiation parties may apply to the Tribunal for a determination.

Completing the Form 5

A future act determination application must be made in the prescribed form set out in the *Native Title (Tribunal) Regulations 1993* (referred to as the Form 5).

Generally, completing a Form 5 application is self-explanatory. This information sheet provides some guidance on completing particular parts of the form which may require further explanation.

Please contact the Tribunal should you need any further assistance. Contact details are listed below under heading 'More Information'.

Part 6 - Registered native title body corporate (if any)

When the Federal Court makes a determination recognising native title, the *Native Title Act 1993* requires the native title holders to establish a corporation to represent them and hold the rights and interests recognised in the determination. This corporation is known as a prescribed body corporate, and is the 'registered native title body corporate' once the name and address of the corporation is registered on the National Native Title Register.

Part 7 - Registered native title claimant (if any)

A native title claimant application is made by a person or persons known as the applicant, who are authorised by the native title claim group to make the claim on their behalf. Once registered on the Register of Native Title Claims, the person or persons whose names appear on the Register as the applicant are referred to as the 'registered native title claimant'.

Part 9 - Description of the area of land concerned

A full description of the area of land or waters concerned is required, and should be as detailed as possible to assist the Tribunal in considering your application. The description should identify:

- whether the affected area includes land, waters or both;
- the State or Territory, and region, in which the area is located; and
- the precise area affected, referenced by appropriate topographic (natural and artificial features of the area) or cadastral (survey) markers.

A survey of the affected area will not be required for the description.

If possible, a map, on an A4 sized piece of paper, which clearly shows the geographic boundaries of the area should also be attached to the application. Any map should be drawn on an appropriate topographic or cadastral reference map or plan produced by or registered with a Commonwealth, State or Territory government, or an extract from such a map (in which case the map from which it was extracted should be identified). These maps can be purchased from a number of Commonwealth and State government departments and their agents.

Part 10 - Description of the act

You must set out full details of the act, including what the grant is for (such as exploration, prospecting or mining) and how the act will be conducted. If possible, a draft of the legislation, instrument or other document by which the act will be done should be attached to the application.

Part 12 - Statement of the effect of the act

The matters you are required to comment on in this section of the Form 5 are the kinds of matters likely to have been discussed when the negotiation parties considered an agreement in relation to the doing of the act. Please provide as much detail as possible, to the extent of your knowledge.

Part 13 - Outline of evidence

Some of the evidence you may want to outline to the Tribunal in considering your application includes:

- copies of any reports or surveys you have commissioned (anthropological, Aboriginal heritage etc.);
- any relevant documentation exchanged between the negotiation parties;
- details of any Aboriginal heritage sites in the area;
- details of the current land tenure and mining, petroleum and geothermal tenure; and
- copies of any relevant tenement documents, operational or other reports.

New requirements - Part 4 and Part 8

New requirements were added to the Form 4 by the *Native Title Legislation Amendment (2021 Measures No. 1) Regulations 2021*.

Part 4 asks you to state your preferred method of service (that is, the email or postal address to which the Tribunal and other parties can send you documents and correspondence).

Part 3 requires you to include a physical address but you may also add an email address and fax number. Most communication with the Tribunal is by email.

Part 8 asks you to identify the government that issued the future act notice and the 'notification day' specified in the notice. The notification day will be recorded on the future act notice and including it on the Form 5 will assist the Tribunal to identify the act to which the application relates.

Lodging your form

You may lodge your application by post or email, or you may submit it over the counter at any office of the Tribunal.

By post to:

National Native Title Tribunal
GPO Box 9973
City State Postcode

Email lodgment at:

s35apps.compliance@nntt.gov.au

An auto-generated receipt will be issued upon lodgment of your application by email. You must ensure a confirmation notice is received. If no confirmation is received, please contact the Tribunal.

Filing fees

The application fee for lodgment of a Form 5 is \$891, as of 1 July 2021. This figure is revised every year.

The fee is payable per future act (for example, for an application relating to five mining leases, you must pay five times that amount).

The fee can be paid by cheque made out to the 'Federal Court of Australia', or by electronic funds transfer.

If you are paying by cheque, please send this by post with your completed application form or submit it in person with the form.

If you are paying by electronic funds transfer, please tell us that you wish to pay this way when you lodge your Form 5. We will then provide you with a file number within 24 hours.

You will need to make your payment within 24 hours of receiving the file number. You will also need to complete a '[Request Form – to pay the fee using EFT](#)' which is available on our website.

Once you have made the transfer, please return the completed request form and proof of transfer to the Tribunal.

A receipt of payment will be provided.

No fee payable

If one or more of the following circumstances applies, a filing fee will not need to be paid:

1. You are assisted by a representative Aboriginal/Torres Strait Islander body; or
2. One or more of the people making the application:
 - a) holds a health care card or pensioner concession card;
 - b) is in prison;
 - c) is under 18 years of age; or
 - d) receives ABSTUDY.

If you are not required to pay a fee because one of these circumstances applies, you must provide proof when you lodge the Form 5 (for example a photocopy of your health care card).

You may also request a fee waiver if you believe the fee would impose financial hardship. Such a request should be accompanied by supporting evidence, for example information in relation to your income, expenses, liabilities and assets.

Refund of fee

If the application is not accepted, or the Tribunal makes a determination in your favour, you are entitled to a fee refund. To request a fee refund, you will need to fill in the '*Request Form – for fee refund*' available on the Tribunal's website and return it to the Tribunal.

What happens next?

As soon as possible after your application is received by the Tribunal, an acknowledgement will be sent. The Tribunal will then examine the application and decide whether it can be accepted under the *Native Title Act 1993*. Should the application not be accepted, you will be provided with reasons as to why. If the application is accepted you will then receive further information about the process.

More information

Please contact the Tribunal via email at s35apps.compliance@nntt.gov.au, or by ringing your local Tribunal office.