

# Information sheet

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

### **Introduction**

This information is issued by the Native Title Registrar to assist prospective applicants and their advisers in completing a Future Act Determination Application. An application to the National Native Title Tribunal (the Tribunal) for a Future Act Determination must be in the form attached to this guide (Form 5 in Schedule 1 to the Native Title (Tribunal) Regulations 1993). Form 5 provides sets out the information which must be included in and the documents which must be attached to a Future Act Determination Application. This guide provides you with additional information to assist you in preparing and lodging that application.

If, after reading this guide, you have any questions about the completion of the form you should write to the Native Title Registrar, National Native Title Tribunal at GPO Box 9973 in the capital city in your State or Territory or talk to someone at the Registrar's office by telephoning the Tribunal's toll free number 1800 640 501.

### **Is Form 5 the right form for me?**

A Future Act Determination Application (Form 5) is used where:

- a notice of intention to do a "future act" (see definitions of "act" and "future act" in sections 226 and 233 respectively of the Native Title Act 1993) has been given to a registered native title body corporate, registered native title claimant and others;
- the agreement of the native title parties has not been given within six (6) months; and
- one or more of the parties want the Tribunal to decide whether the act should or should not be done, and, if done, on what conditions.

A future act determination can be sought by:

- the government who gave the notice;
- the registered native title body corporate;
- the registered native title claimant; or
- a person who requested or applied for the act to be done.

If the notice was issued by a State or Territory government and that State or Territory has a court, tribunal or other body recognised for the purpose of the *Native Title Act 1993*, Form 5 is not appropriate for you. You must go to the State or Territory body. If you are unsure about whether there is an approved body in that State or Territory you should get advice from a representative

Aboriginal / Torres Strait Islander body (see 4 on page 3 for what these bodies are) or staff of the Tribunal may be able to help.

A different form is used in an application to the Tribunal objecting to the inclusion in an expedited procedure (Form 4).

A guide on how to complete the Form 4 is also available from the Native Title Registrar (the Registrar) and can be obtained by writing or telephoning as above.

Other forms that must be used in applications to the Federal Court (Native Title (Federal Court) Regulations 1998) are:

- Native title determination application - claimant application (Form 1)
- Native title determination application - non-claimant application (Form 2)
- Revised native title determination application (Form 3)
- Compensation application (Form 4)
- Notice of intention to become a party to an application (Form 5)

The Forms and Guides on how to complete these Forms are available from the Federal Court.

### **How do I set out my application?**

The application you lodge with the Registrar should be on A4 size paper (210mm x 297mm) and the writing on it must be clear, sharp, legible and permanent. It is best typewritten. There should be writing on only one side of each page. It is best to leave a margin at least 25mm wide at the top and bottom and left and right hand sides of each page and space between each line of writing of at least 3mm.

At the start of your application you must include the formal headings to Form 5 (i.e. form number, reference to the *Native Title Act 1993*, name of form, references to relevant sections and regulations and that the application is to the Registrar).

It is not necessary to include the reminders (shown in CAPITAL ITALICS) in your application.

The information and the documents which must be included in your application are shown in italics in Form 5. This information should be set out in separate paragraphs (divided into sub-paragraphs of necessary).

Each paragraph should start with a short description to identify what that information relates to. For example, paragraph 4 could read:

"The representative of the applicant is Ms A Lawyer, Principal Solicitor, Aboriginal & Torres Strait Islander Legal Service, 137 Spence Street, Cairns, telephone 07-4012 3456, facsimile 07-4034 5678."

Or

"The applicant is not represented in this application".

The following information (numbered as per the paragraphs in Form 5) is given to help you complete each paragraph of your application. Information to help you in lodging your application with the Tribunal is also included.

1. This is one of the formal parts of the application. It should be set out exactly as in Form 5. Your full name (given name(s) and surname) should be included (or the full name of each applicant if there are more than one). You should also include in full any other names (eg an Aboriginal of Torres Strait Islander name) you (or each applicant) are known by.

If you are preparing the application for a body corporate "I" should be omitted and the body corporate's full name be included.

2. Your usual address (or the usual address of each applicant if there are more than one) should be given. In the application this should be set out with a short descriptive lead in, such as "The applicant's address is.....".
3. An address for service is the address where all notices or other documents about your application can be sent to. You can change your address for service at any time by giving the Registrar written notice of a new address for service. Any notice or document posted to you at your address for service or delivered at that address can be regarded as having been received by you. It is important that this address be fairly permanent.

If it is not your usual address, you should check regularly at this address in case documents for you have been sent or delivered there.

If you have a representative it is usual for your representative to also be your address for service but this is up to you. You should discuss this with your representative.

If your address for service is your usual address and you will be away from that address for some time you should make sure any documents sent to or delivered for you there will be sent to you quickly, if this possible. If not, you should give the Registrar a new address for service where it will be possible for documents to be

sent on to you quickly or, at least, discuss your situation with the staff of the Tribunal so the Tribunal may be aware of possible delays in your receiving documents.

Telephone and facsimile (fax) numbers (if any) at which you can be contacted by telephone or to which notices or documents for you may be sent by fax should be included. Area codes should be shown. You should indicate if these numbers are only available during particular hours.

In the application the address for service and telephone and fax numbers should be set out with a short descriptive lead in, such as "The applicant's address for service is ....., telephone (during the day) ..... and facsimile .....".

4. You may be represented in your dealings with the Tribunal by any person or body. This could include a relative, friend, solicitor or a representative Aboriginal/Torres Strait Islander body.

A number of Aboriginal and Torres Strait Islander bodies throughout Australia have been approved by the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs to represent Aboriginal and Torres Strait Islander people in particular areas in researching, preparing and making native title applications and in negotiations and hearings. These bodies have not been appointed for all areas in Australia. If you want information about these bodies you could check with the nearest office of the Aboriginal and Torres Strait Islander Commission or talk to one of the staff of the Tribunal.

A representative can be very helpful in dealing with the Tribunal for you, in preparing your application and other documents, as well as at conferences or in hearings. Applications often involve considerable research, gathering of evidence from a variety of sources (sometimes from experts) and difficult legal issues.

You should indicate whether you have a representative or not and, if so, the name, the address, telephone and fax numbers (if any) of your representative. Examples of how this might be set out in the application are given in "How do I set out my application?" above.

5. You must set out the full name of any registered native title body corporate for any of the land and waters affected by the act. A short descriptive lead in, such as "The registered native title body corporate for the area concerned is .....".
6. You must set out the name of any registered native title claimant for any of the land and waters affected by the act. A short descriptive lead in, such as "The registered native title claimant for the area concerned is .....".

7. You must state the name of the government that issued the notice and the date of that notice. The government could be the Commonwealth Government or a State or Territory government. A copy of the notice should be attached. This should be set out with a short descriptive lead in, such as "The notice was issued by ..... on ..... A copy of the notice is attached."
8. The application must set out a description of the area of land and waters affected by the act. If possible, a map clearly showing the geographic boundaries of the area should also be attached to the application.

The description should indicate:

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

A survey of the affected area will not be required for the description. This can be given by reference to existing identifications.

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, quite reasonably, from a number of Commonwealth and State government departments and their agents (check under "Maps" in your Yellow Pages). The geographic boundaries of the affected area should be clearly and unambiguously marked. It is best if the map is on A4 size paper (210mm x 297mm). If this is not possible it would assist if you could also provide with the application one clear additional copy of the map (enlarged or reduced as required) on A4 size paper. The Tribunal may be able to provide assistance in this area.

In the application this should be set out with a short descriptive lead in, such as "The area of land (and/or waters) affected by the act is ..... A map showing the geographic boundaries of that area is attached to the application".

9. The applicant must set out full details of the act, including whether it involves the grant of a licence to prospect or explore for a substance that may be mined. If possible, a draft of the legislation, grant, instrument or other document by which the act will be done should be attached to the applications.
10. No Agreement Reached  
You should include a statement that the negotiating parties have not been able to reach an agreement on the doing of the act (either without conditions or subject to

conditions to be complied with by the parties) within six (6) months of the notice being given.

In the application this should be set out with a short descriptive lead in, such as "The negotiating parties have not been able to reach agreement on the doing of the act within six months of the Government giving notice of intention to do the act, one which involves the grant of a prospecting or exploration licence."

### Agreement Reached

When a future act consent determination is requested, the Tribunal must be satisfied that the native title party has reached agreement, has given its consent to a determination being made, and that it is appropriate to make the determination in all the circumstances. The Tribunal must assess whether consent to the determination has been properly given, and will usually accept undertakings from parties' legal practitioners that this is the case. The applicant will need to provide the reasons for a s 31 agreement not being executed and provide details of the native title party's consent to the determination.

11. You must set out a description of the effect the act will have on:

- the enjoyment by the native title parties of their registered native title rights and interest;
- the way of life, culture and traditions of any of those parties;
- the freedom of access by any of those parties to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions; and
- any area or site on the land or waters concerned of particular significance to the native title parties in accordance with their traditions.

You should give brief details of the facts which support each of your claims.

In the application this should be set out with a short descriptive lead in, such as "The effect of the act on the enjoyment by the native title parties on their registered native title interests will be .....".

12. A brief summary of the type of evidence which you will produce to the Tribunal to show the effect of the act on the area concerned must be given. The type of evidence could include case studies of the effects on indigenous people of the act or similar activities; historical, anthropological and genealogical documents; and evidence from you and other people, including experts.

In the application this should be set out with a short descriptive lead in, such as "The type of evidence the applicant will produce to the National Native Title Tribunal to show the effect the act will have on the area concerned is .....".

13. You should provide a brief summary of the nature and extent of
  - non native title rights and interests in relation to the area concerned; and
  - how the land is currently used by persons other than native title parties.For example, is the land used for pastoral activities? Is it an A-class reserve?
14. If you have any further information that is relevant and will assist the Tribunal in the determination of the application, this should be set out. If further information is provided there should be a short descriptive lead in, such as "Further information relevant to the application is .....".

### **How do I lodge my application?**

The completed application should be signed by you (each applicant if more than one) and can be posted to the Native Title Registrar, National Native Title Tribunal at GPO Box 9973 in the capital city in your State or Territory or lodged at any registry of the National Native title Tribunal. If you are posting your application it would be best to send it by security post to make sure it is delivered.

The application must be accompanied by a fee of \$719 unless you:

- you have been granted legal aid, under a legal aid scheme or service established under Commonwealth, State or Territory law, or approved by the Attorney General, for the matter to which the fee relates; or
- you have been assisted by:
  - (i) a representative body recognised by the Commonwealth Minister under section 203AD of the Act; or
  - (ii) a person or body to whom funding has been made available by the Secretary of the Department under section 203FE of the Act; or
- you are the holder of a health care card, a health benefit card, a pensioner concession card or Commonwealth seniors health care card issued by the Department of Social Security; or
- you are the holder of any other card issued by the Department of Social Security or the Department of Veteran's Affairs that certifies entitlement to Commonwealth health concessions; or
- you are an inmate of a prison or otherwise lawfully detained in a public institution; or
- you are a child under the age of 18; or
- you are in receipt of a youth allowance, or an Austudy payment, within the meaning of the *Social Security Act 1991*; or
- you are in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme; or
- you are a Government party who has previously made an application under section 35 of the Act for a future act determination for which the fee was paid, the current application also relates to the same future act, and the first application was

withdrawn to allow you to negotiate in good faith with the other negotiation parties; or

- the Registrar, having had regard to your income, day-to-day living expenses, liabilities and assets, waives the fee on the ground that payment of the fee would impose financial hardship on you.

If one of these exemptions apply some form of proof (e.g. photocopy of letter from the Attorney-General, Aboriginal and Torres Strait Islander Commission or Legal Aid Office verifying grant of aid; photocopy of relevant card; or letter from prison or institution management verifying detention) must be attached with the application.

Cheques or money orders should be drawn in favour of the "National Native Title Tribunal".

If you have paid the fee and the Tribunal makes a determination in relation to a right to negotiate application and certifies that the proceedings terminated favourably to you the \$719 will be refunded.

### **What happens after the Registrar gets my application?**

As soon as possible after your application is received by the Tribunal an acknowledgment will be sent to you. The Tribunal will then examine the application and decide whether it can be accepted under the Native Title Act 1993. You will be sent written advice of the Tribunal's decision. If the application is not accepted you will be told why. If the application is accepted, you will also be advised about the further procedures which will apply to your application.