

Information sheet

How to complete an objection to inclusion in an expedited procedure application (Form 4)

Introduction

This information is issued by the Native Title Registrar to assist prospective applicants and their advisers in completing an Objection to Inclusion in an Expedited Procedure Application. An objection to the National Native Title Tribunal (the Tribunal) to inclusion in an expedited procedure must be in the form attached to this guide (Form 4 in Schedule 1 to the Native Title (Tribunal) Regulations 1993. Form 4 sets out the information which must be included in and the documents which must be attached to an Objection to Inclusion in an Expedited Procedure Application. This guide provides you with additional information to assist you in preparing and lodging that Objection.

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 Native Title Registrar's office by telephoning the Tribunal's toll free number 1800 640 501.

Is Form 4 the right form for me?

An Objection to Inclusion in an Expedited Procedure Application (Form 4) is used where a government has issued a notice that it proposes to do an act which it considers attracts the expedited procedure and the applicant wishes to object to this procedure. Put simply, this means that the Government believes that the act will have little if any effect on the native title holders and does not believe that negotiation is necessary. If native title holders believe that they will be adversely affected by the act and that the Government should negotiate with them, this form should be lodged by:

- the registered native title body corporate; or
- the registered native title claimant.

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 4 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 point 4, 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 for a future act determination (Form 5).

This form and a Guide on how to complete the Form 5 are also on our website or available from the Native Title Registrar (the Registrar) and can be obtained by writing or telephoning as above.

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 4 (ie 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 4. This information should be set out in separate paragraphs (divided into subparagraphs 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 4) 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 4. 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 or 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 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 on to you quickly, if this is 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 Families, Housing, Community Services and Indigenous 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 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) or talk to one of the staff of the Tribunal (see: <http://www.ntrb.net/PublicPages/Login.aspx>).

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, 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 state whether you are the registered native title body corporate or the registered native title claimant in respect of the land affected by the act. If you are neither of the above then you are not able to lodge an objection as you do not have a sufficient interest in the land. If you believe that you do have a sufficient interest in the land it will be necessary for you to lodge an application for native title determination (Form 1) with the Federal Court at the same time as you lodge your objection with the Tribunal.

This paragraph should be set out with a short descriptive lead in, such as "The applicant is".

6. You must state the name of the government that issued the notice and the date of the notice. The government could be the Commonwealth Government or a government of a state or territory. A copy of the notice should be attached to your application. This should be set out with a short descriptive lead in, such as "The government that issued the notice was, the date of issue of the notice was".
7. The application must set out the ways the act will affect the community or social activities of the native title holders, the land, and any sites of particular significance to them. This should be set out with a short descriptive lead in, such as "The act is not an act attracting the expedited procedure because".

8. A brief summary of the type of evidence which you will produce to the Tribunal to support the objection to the expedited procedure must be given. The type of evidence which could be used to support such a claim includes historical, anthropological and genealogical documents and evidence from you and other people, including experts. While only a summary is required it should be as precise as possible.

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 support the objection is".

9. If you have any further information that is relevant and will assist the Tribunal in the determination of the objection, 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.

Note: In January 2008 the Tribunal established for Western Australia a central email address (objectionswwa@nntt.gov.au) for the lodgement of Objection applications (Form 4). Upon delivery of objection emails the following auto-generated receipt will be sent to the lodger:

'Your application has been received. If the application is accepted all parties will be notified within 21 days.'

Responsibility remains with the objector/objector's representative to ensure that a confirmation notice is received.

Electronic objection lodgement is governed by the provisions of the *Electronic Transactions Act 1999* . Section 14(3) provides guidance on the time of receipt:

"Section 14(3) For the purposes of a law of the Commonwealth, if the addressee of an electronic communication has designated an information system for the purpose of receiving electronic communications, then, unless otherwise agreed between the originator and the addressee of the electronic

communication, the time of receipt of the electronic communication is the time when the electronic communication enters that information system."

It is therefore important that you keep a record of objection applications for which a confirmation of receipt notice is provided. To assist in this process the Tribunal suggests that the following procedures (not mandatory) may be adopted:

- Objection applications to be lodged electronically as individual records, with one application attached to each email; or
- The covering email to list each attached objection application for the avoidance of doubt as to the number and subject of each attachment

Benefits of email lodgement are as follows:

- simplicity of lodgement process
- a cost effective mechanism for transmission
- certainty of receipt of entire document (and consequent ability to follow up on any emails for which an auto-generated receipt is not received)
- consequent electronic record of all objections lodged
- enhanced tracking ability
- reduced paper usage (and therefore costs) and
- enhanced Tribunal accountability.

The application must be accompanied by a fee of \$682 unless:

- 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 Centerlink; or
- you are the holder of any other card issued by Centerlink or the Department of Veterans' 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
- the Registrar, having had regard to your income, day-to-day living expenses, liabilities and your 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, FaHCSIA or Legal Aid Office verifying grant of aid; advice from representative body that objector has been granted legal 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 \$682 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.