



Native Title Compensation

What is a compensation application?

A compensation application is made by native title holders seeking compensation for the loss, diminution, impairment or other effect of an act on their native title rights and interests over an area of land or waters.

Compensation may be sought by native title holders for the loss, diminution, impairment or other effect on their native title rights and interests caused by certain acts including the following:

- the validation of acts done since the *Racial Discrimination Act 1975* (Cth) commenced which would otherwise have been invalid because of the existence of native title;
- acts done on or after 1 January 1994; and
- the validation of some acts done between 1 January 1994 and 23 December 1996 which were invalid under the *Native Title Act 1993* (Cth) (**NTA**).

Who can apply for compensation?

Compensation applications can be made by:

- for areas where native title has been determined to exist, the registered native title body corporate for that area;
- for areas excluded from a determination or where native title has been determined not to exist, a registered native title body corporate on behalf of the persons who claim to be entitled to the compensation in the area; or
- persons authorised by all the persons who claim to be entitled to the compensation (**compensation claim group**), provided the persons applying are also included in the compensation claim group.

The application is made to the Federal Court of Australia (**Federal Court**)

The application must be made to the Federal Court which manages the application until it is finalised by either being determined, struck out, dismissed, withdrawn or discontinued.

If a determination is made that compensation is payable, the Federal Court order will set out:

- the names of the persons entitled to the compensation or the method for determining such persons;
- the method (if any) for determining the amount or kind of compensation to be given to each person; and
- the method for determining any dispute regarding the entitlement of a person to an amount of the compensation.

If the application is not made over an area where there is a determination of native title, the Federal Court will determine whether native title rights and interests exist in the area and who the native title holders are, before it makes a determination of compensation.

Who pays compensation?

Generally a State or Territory government or the Commonwealth government would be liable to pay any compensation. However, there may be circumstances, such as where provided for in State or Territory legislation, where compensation is payable by persons other than the State, Territory or Commonwealth.

Any queries in relation to the applicable legislation should be directed to the relevant State or Territory government.

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What is the role of the National Native Title Tribunal (NNTT)?

The NNTT plays a limited role in the compensation process.

When a compensation application is made, the NTA requires the Federal Court to give the application to the Native Title Registrar (**Registrar**), who is required to notify certain people and organisations of the details of the application.

Those people or organisations must have a particular interest in the area covered by the application, and include:

- any proprietary interest holders;
- any registered native title claimant and registered native title body corporate;
- any relevant representative Aboriginal and Torres Strait Islander bodies;
- the Commonwealth Minister;
- any relevant local government authorities; and
- any person whose interests may be affected by a determination in relation to the application.

The Registrar obtains information in relation to the proprietary interest holders in the area from the relevant State or Territory government registers. The other people and organisations are identified through information held by the NNTT.

The Registrar must also notify the public in a special interest newspaper and a local newspaper that circulates in the area. The public notice will provide details of the application including a map and brief description of the area, information about how to become a respondent party, and the day the notification period commences. The NTA provides that the application must be notified for a period of three months.

The notification process assists the Federal Court to identify the persons or organisations who wish to become a respondent party to the compensation application.

The Registrar also includes the details of the compensation application on the [NNTT website](#).

In addition, the Registrar may provide assistance to native title holders to prepare mapping or the technical description for the external boundary of the application area.

The NNTT plays no further part in the compensation proceeding.

Confirming your interest

A person or body who is identified as a proprietary interest holder and is notified of a compensation application, may wish to contact their relevant State or Territory government to confirm whether their interest is affected by the application. Alternatively, they may wish to seek independent legal advice about whether they should apply to the Federal Court to become a party.

Becoming a party to the proceeding

After seeking confirmation or advice, a person or body who wishes to become a respondent party to the compensation application must apply to the Federal Court on or before the notification end date, being three months from when notification commences, and request to become a party. After this date, the persons or body will need to seek leave from the Federal Court to become a party. Please visit the [Federal Court's website](#) for further information about becoming a party to a proceeding.