

SOUTH AUSTRALIA

NATIVE TITLE (SOUTH AUSTRALIA) REGULATIONS 1995

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Application forms

REGULATIONS UNDER THE NATIVE TITLE (SOUTH AUSTRALIA) ACT 1994

Native Title (South Australia) Regulations 1995

being

No. 192 of 1995: *Gaz.* 12 October, 1995, p. 1082¹

as varied by

No. 67 of 1996: *Gaz.* 9 May 1996, p. 2468²

- ¹ Came into operation (except regs. 7-14 and Sched.) 9 May 1996: reg. 2(1); regs. 7-14 and Sched. came into operation 17 June 1996: reg. 2(2).
- ² Came into operation 9 May 1996: reg. 2.

Citation

1. These regulations may be cited as the *Native Title (South Australia) Regulations 1995*.

Commencement

2. (1) Subject to subregulation (2), these regulations will come into operation on 9 May 1996.

(2) Regulations 7 to 14 and the schedule will come into operation on 17 June 1996.

Interpretation

3. In these regulations, unless the contrary intention appears—

"**Act**" means the *Native Title (South Australia) Act 1994*;

"**common law holder**" of native title means the person or persons who are recognised at common law as holding the native title.

Representative Aboriginal body¹

4. For the purposes of the Act, the *Aboriginal Legal Rights Movement Inc.* is prescribed as the representative Aboriginal body in relation to the whole of the State except the areas described in the first schedule of the *Pitjantjatjara Land Rights Act 1981* and the first schedule of the *Maralinga Tjarutja Land Rights Act 1984*.

¹ The Minister is satisfied that the *Aboriginal Legal Rights Movement Inc.* is eligible under section 3(2) of the Act to be prescribed as a representative Aboriginal body. Compare determination of representative Aboriginal/Torres Strait Islander Bodies by Commonwealth Minister under the Commonwealth Act (see *Commonwealth of Australia Gazette* No. S402, 30 December 1993).

Commonwealth Minister¹

5. For the purposes of the Act, the Minister for Aboriginal and Torres Strait Islander Affairs for the Commonwealth is designated as the Commonwealth Minister.

¹ Under the Act the Commonwealth Minister—

- is entitled to be joined as a party to proceedings involving a native title question (see section 16);
- is entitled to make an application for a native title declaration (see section 19);
- may be allowed to introduce evidence, and to make submissions, relevant to a native title declaration (see section 23);
- is entitled to apply for variation or revocation of a native title declaration (see section 25);
- is one of the persons on whom a notice or document must be served if it is to be validly served on all who hold or may hold native title in native title land (see section 30).

State Minister¹

6. For the purposes of the Act, the Attorney-General of the State is designated as the State Minister.

¹ Under the Act the State Minister has similar functions and powers to the Commonwealth Minister (see footnote to regulation 5).

Information to be included in State Native Title Register

7. (1) The State Native Title Register must contain the following information in relation to each decision recorded in the register:¹

3.

- (a) the name of the body that made the decision;
- (b) the date on which the decision was made;
- (c) a description of the land covered by the decision;
- (d) a description of the matters decided, including if the decision is that native title exists in land—
 - (i) a description of the persons who are recognised at common law as the holders of native title in the land; and
 - (ii) a description of the name of the body corporate representing those persons (and a notation of whether the body corporate holds the native title in trust) and
 - (iii) a description (as considered appropriate by the Registrar) of the nature and extent of the rights and interests conferred by the native title.

(2) The State Native Title Register must contain the following information in relation to each claim to native title in land accepted under the Act and recorded in the register:¹

- (a) the date on which the application to register the claim was made;
- (b) a description of the land covered by the claim;
- (c) a description of the persons who it is claimed hold the native title.

(3) The State Native Title Register must contain a note of—

- (a) each application for registration of a claim to native title in land made under the Act (but the applicants are not to be taken to be registered claimants until the claim is accepted); and
- (b) each application for a declaration that land is subject to native title made under the Act,

unless the application is so defective that, in the opinion of the Registrar, it cannot be properly noted.

(4) A note of an application may be altered or removed by the Registrar in accordance with the rules.

(5) As soon as practicable after a note of an application is entered in the register the Registrar must notify the Commonwealth Registrar of the details of the application.

¹ The information is in addition to that required to be recorded under section 17 of the Act.

Fee for inspection of State Native Title Register

8. For the purposes of section 17(3) of the Act, the fee for inspection of the State Native Title Register is \$20.

Form of certain applications

9. If the form of an application under the Act is set out in the schedule, the application must be made in that form and must include the information and be accompanied by the documents required by that form.¹

¹ Sections 18(3)(g) and 20(1)(f) of the Act enable the regulations to expand on the information to be contained in, and the documents to accompany, applications for native title declarations.

Amendment of applications

10. (1) An application for a native title declaration (including an application for registration of a claim to native title) or for variation of a native title declaration may be amended at any time, by leave of the Registrar or the Court.

(2) For example, the amendment may include contraction of the area of land in which native title is claimed, reduction of the scope of native title claimed, substitution of the registered representative of claimants or substitution or joinder of persons as applicants to the application.

(3) In the case of an application recorded or noted on the State Native Title Register, the amendment must be noted on the register.

Principles of eligibility for nomination as registered representative of native title holders

11. A body corporate is eligible for nomination as the registered representative of native title holders if—

- (a) it is an Aboriginal association within the meaning of the *Aboriginal Councils and Associations Act 1976* (Cwth); and
- (b) it is incorporated under that Act for the purpose of performing the functions of a registered representative of native title holders (and that purpose is set out in its objects or Rules); and
- (c) all of its members are persons proposed to be recognised in a native title declaration as the holders of native title in land; and
- (d) provision is made in the Rules of the association—
 - (i) for performing its functions as a registered representative of native title holders; and
 - (ii) for making decisions; and
 - (iii) if a decision is about a proposal to surrender the native title or to authorise an act that will affect the native title, requiring the representative—
 - (A) to consult and consider the views of the representative Aboriginal body for the area in which the land concerned is situated; and
 - (B) if the representative considers it appropriate and practicable—to give notice of those views to the common law holders of the native title; and

5.

- (iv) setting out the circumstances in which a decision may be made by the representative without consulting with, and obtaining the consent of, the common law holders (but this may not include a decision about the surrender of the native title or an agreement authorising an act that will affect the native title); and
- (v) for consulting with the common law holders of the native title (where consultation is required); and
- (vi) for obtaining the consent of the common law holders of the native title (where consent is required) by following either—
 - (A) a process of decision making recognised by the Aboriginal custom or tradition of the common law holders; or
 - (B) a process of decision making agreed to and adopted by the common law holders in relation to the decision or in relation to decisions of that kind; and
- (vii) for changing the Rules of the association.

Functions of registered representative of native title holders

12. (1) The functions of a registered representative of native title holders are—

- (a) if the representative holds the native title in trust—
 - (i) to act as trustee of the native title for the common law holders; and
 - (ii) to deal with the native title as trustee to the extent authorised by the law of the Commonwealth or the State (for example, the representative could enter into an agreement under section 21 of the Commonwealth Act to surrender the native title or to authorise an act that will affect the native title); and
 - (iii) to take action to protect the native title and to protect and enforce the rights of the common law holders including rights to compensation; and
 - (iv) to hold money (including money received by way of compensation or other consideration payable in relation to the native title) on trust and to invest or otherwise apply the money as directed by the common law holders of the native title;
- (b) if the representative does not hold the native title in trust—
 - (i) to act as agent of the common law holders of the native title in respect of matters relating to the native title; and
 - (ii) to perform any other functions in relation to the native title as directed by the common law holders; and

6.

- (iii) to hold money (including money received by way of compensation or other consideration payable in relation to the native title) on trust and to invest or otherwise apply the money as directed by the common law holders of the native title.

(2) The functions must be carried out in accordance with the Rules of the representative.

Authorised dealings with native title

13. If native title is held on trust by the registered representative of the native title holders, the native title cannot be dealt with unless the representative has complied with its Rules with respect to consulting with, and obtaining the consent of, the common law holders of the native title.

Evidence of consent and consultation

14. In any proceedings, a certificate signed by at least 5 members of a registered representative of native title holders certifying—

- (a) that the common law holders have been consulted about a decision and have consented to the decision (as required by the Rules of the representative); or
- (b) that the relevant representative Aboriginal body has been consulted about a decision and its views considered by the representative (as required by the Rules of the representative);

will, in the absence of proof to the contrary, be taken to be proof of the matters so certified.

Service on all who hold or may hold native title in land

15. (1) For the purposes of section 30(1)(b) of the Act, notice of the nature and effect of the notice or other document being served must be given—

- (a) by publishing a notice (as required by subregulations (2) and (3)) in—
 - (i) a newspaper circulating generally throughout the State; and
 - (ii) if there is a local or regional newspaper that is published at least weekly and circulated generally in the area in which the land, or part of the land, concerned is situated—that newspaper; and
 - (iii) if there is a newspaper or magazine that caters mainly or exclusively to the interests of Aboriginal people and is published at least monthly and circulated generally in the area in which the land, or part of the land, concerned is situated—that newspaper or magazine; and
- (b) by informing the following broadcasting services of the fact that the notice has been published and where it has been published:
 - (i) a general broadcasting service that serves the area within which the land, or part of the land, is situated; and

7.

- (ii) if there is a broadcasting service that caters mainly or exclusively to the interests of Aboriginal people and serves the area within which the land, or part of the land, is situated—that broadcasting service.

(2) The published notice must be at least 4 centimetres by 4 centimetres.

(3) The published notice must include a clear description of the land concerned and of the nature and effect of the notice or other document being served.

SCHEDULE
Application forms

Form 1
Native Title (South Australia) Act 1994

Application for registration of claim to native title

TO: The Registrar of the Environment, Resources and Development Court

1. **Applicants**

Names (including Aboriginal names)	Addresses
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.....

[The applicant must be—

- a natural person or persons claiming to hold native title either alone or with others; or
- a representative Aboriginal body acting on behalf of a natural person or persons claiming to hold native title either alone or with others.]

2. **Registered representative of applicants**

Name

Address

Phone number

Facsimile number (if any)

[The registered representative will receive notices, and conduct negotiations, on behalf of the person or persons claiming to hold native title.]

3. **Native title holders**

.....

[Describe the persons (other than the applicant) who it is claimed hold native title.]

4. **Land over which native title is claimed**

.....

[Define the land to which the claim is made with sufficient particularity to enable it to be readily identified and give the indigenous name of the area or sites within the area covered by the claim.

The attached schedule sets out recommendations about how the information should be presented.]

9.

5. **Nature of rights conferred by native title**

.....

[State the nature of the rights conferred by the native title and, if the rights conferred differ from one part of the area under claim to another, specify each such part and the nature of the rights conferred by the native title claimed for it.]

6. **Basis on which native title is claimed**

.....

[State the basis on which native title is asserted and give details of any present or former association with the land by the persons, or the ancestors of the persons, whom it is claimed hold native title in the land.

Give details of inquiries made to ascertain this information.]

7. **Outline of type of evidence**

.....

[Outline the type of evidence which the applicant will produce to the Court to support the claim, such as historical, anthropological and genealogical documents and oral evidence.]

8. **Present and former association with the land by Aboriginal peoples other than the claimants**

.....

[Section 18 of the Act requires an applicant for registration of a claim to make reasonable inquiries about present and former association by Aboriginal peoples with the land.

Clause 6 above includes information about the association by the claimants and their ancestors with the land. This clause should cover present and former association with the land by other Aboriginal peoples.

Give details of all inquiries made by the applicant and all information known to or ascertained by the applicant about present and former association by Aboriginal peoples (other than the claimants) with the land.]

9. **Title to, and tenure of, the land and history of title to, and tenure of, the land**

.....

[Section 18 of the Act requires an applicant for registration of a claim to make reasonable inquiries about the title to, and tenure of, the land and the history of the title to, and tenure of, the land.

Clauses 6 and 8 above include information about the association by Aboriginal peoples with the land. This clause should cover information relating to other forms of title to, and tenure of, the land and the history of that title or tenure.

The attached schedule sets out recommendations about the inquiries that should be made and the documents that should accompany the application.

10.

Give details of all inquiries made by the applicant about the title to, and tenure of, the land and the history of the title to, and tenure of, the land and the results of those inquiries, together with—

- a copy of any documents that record an existing or expired interest granted over any part of the land; and
- a copy of the documents of title issued as evidence of the existing or expired interest.

Give all information otherwise known to or ascertained by the applicant about the title to, and tenure of, the land and the history of the title to, and tenure of, the land.]

10. **Details to be kept confidential**

.....

[State any details or information provided that the applicant requests the Registrar to keep confidential from the public.]

11. **Summary**

.....

[Provide a summary of the application, giving a brief description of the claimants, the area of land covered by the claim and the nature and extent of the native title claimed (but excluding confidential information).]

12. **Statutory Declaration**

I/We, the applicants, do solemnly and sincerely declare that the information contained in this application is true and that any copies of documents accompanying the application are true copies.

And I/we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

.....
Signatures of applicants

Date:

SCHEDULE

[This schedule is provided as a guide to applicants. It will assist the Registrar in determining whether the claim may be accepted if, as far as practicable, inquiries are made and information presented as set out in this schedule.]

Definition of land over which native title is claimed

It will assist if the claim is defined by plans and a written description as follows:

Plans

The claim should be delineated on current cadastral plans.

The plans should identify—

- the external boundaries of the claim; and
- all areas within the external boundary of the claim which are not being claimed (for example, freehold areas).

The plans should include a single map clearly delineating the external boundaries of the claim (if feasible, on A4 size paper).

The plans should cover the entire claim area and include all enlargements or insets required to accurately define the boundary.

The delineation of the claim boundary should be of such standard as to allow for reproduction by black and white photocopier.

The boundary should be drawn so that there can be no ambiguity as to the position of the claim. In defining the exact area of the claim, reference should be made, wherever practicable, to cadastral (survey) boundaries and relevant topographic (natural and artificial) features. The plans should clearly show the boundaries and features used to define the claim. Where the claim does not follow an existing cadastral boundary it should be shown with sufficient accuracy and detail to enable it to be established by survey at some future date. (Tribal boundaries are often associated with natural features such as ridges or streams and these are unlikely to be delineated on a cadastral map unless they are also a cadastral boundary.)

Colour coding of plans should be used for identification of—

- various tenures, for example freehold, leasehold, special leases, conservation reserves and Aboriginal freehold; and
- any waters claimed.

For smaller claims, a map showing the claim area in a regional setting should also be provided.

Claims within closely settled areas should be drawn at a scale which allows identification of all holdings within that area.

Written description

The written description of the claim area should include a clear statement of the external boundaries of the claim and definition of areas within those external boundaries not being claimed.

The written description should set out how the claim area and any excluded areas are shown on the plans provided or otherwise describe how the description correlates to the plans.

Inquiries about title to, and tenure of, land and history

Section 18 of the Act requires an applicant for registration of a claim to native title in land to make reasonable inquiries about the title to, and tenure of, the land and the history of the title to, and tenure of, the land.

It is recommended that the inquiries include—

- inquiries to obtain details of the title to and tenure history of freehold land, Crown leasehold land and Crown land (both reserves and vacant land);

[Copies of the following documentation should be provided, including documentation relating to cancelled titles:

- for freehold land, a copy of the Certificate of Title giving owner, date of grant and encumbrances (Note that freehold land generally indicates that native title has been extinguished.);
 - for leasehold land, a copy of the Crown lease giving the type of lease, owner, date of grant and encumbrances;
 - for Crown land, a copy of any reservation, dedication or other encumbrance.]; and
- inquiries to obtain details of all interests in the land held under the *Mining Act 1971*, the *Petroleum Act 1940* or the *Petroleum (Submerged Lands) Act 1982*, including third party interests arising by way of mortgage, caveat, sub-lease etc; and
 - inquiries to obtain details of all interests in the land held under the *Fisheries Act 1982*; and
 - if there is reason to suspect that there may be other interests in the land (eg riparian rights to water, right to occupy issued by agencies or pipeline licences) inquiries to obtain details of those interests in the land.

In each case copies of search documentation should be provided.

The above does not purport to be exhaustive of the inquiries that may be required in any particular circumstances.

Native Title (South Australia) Act 1994

Application for native title declaration other than by or on behalf of claimant

TO: The Registrar of the Environment, Resources and Development Court

1. Applicants

Names

Addresses

.....

2. Name and address for service

Name

Address

Phone number

Facsimile number (if any)

3. Land covered by application

.....

[Define the land to which the application relates with sufficient particularity to enable it to be readily identified and provide a map showing the geographical boundaries of the land.]

4. Interests held by applicant in land

.....

[Give details of any interest held by the applicant in the land together with a copy of the document of title issued as evidence of the grant of the interest (if any).]

5. Nature of declaration sought and grounds on which it is sought

.....

[State the nature of the declaration sought by the applicant and the grounds on which the declaration is sought.]

6. **Present and former association with the land by Aboriginal peoples**

.....

[Section 20 of the Act requires an applicant for a native title declaration to make reasonable inquiries about present and former association by Aboriginal peoples with the land.

Give details of all inquiries made by the applicant and all information known to or ascertained by the applicant about present and former association by Aboriginal peoples with the land.]

7. **Title to, and tenure of, the land and history of title to, and tenure of, the land**

.....

[Section 20 of the Act requires an applicant for a native title declaration to make reasonable inquiries about the title to, and tenure of, the land and the history of the title to, and tenure of, the land.

Clause 6 above includes information about the association by Aboriginal peoples with the land. This clause should cover information relating to other forms of title to, and tenure of, the land and the history of that title or tenure.

The attached schedule sets out recommendations about the inquiries that should be made and the documents that should accompany the application.

Give details of all inquiries made by the applicant about the title to, and tenure of, the land and the history of the title to, and tenure of, the land and the results of those inquiries, together with—

- a copy of any documents that record an existing or expired interest granted over any part of the land;
- and
- a copy of the documents of title issued as evidence of the existing or expired interest.]

8. **Summary**

.....

[Provide a summary of the application with a view to the summary being made available to the public.]

9. **Statutory Declaration**

I/We, the applicants, do solemnly and sincerely declare that the information contained in this application is true and that any copies of documents accompanying the application are true copies.

And I/we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

.....
Signatures of applicants

Date:

SCHEDULE

Inquires about title to, and tenure of, land and history

Section 20 of the Act requires an application for a native title declaration to make reasonable inquiries about the title to, and tenure of, the land and the history of the title to, and tenure of, the land.

It is recommended that the inquiries include—

- inquiries to obtain details of the title to and tenure history of freehold land, Crown leasehold land and Crown land (both reserves and vacant land);

[Copies of the following documentation should be provided, including documentation relating to cancelled titles:

- for freehold land, a copy of the Certificate of Title giving owner, date of grant and encumbrances;
- for leasehold land, a copy of the Crown lease giving the type of lease, owner, date of grant and encumbrances;
- for Crown land, a copy of any reservation, dedication or other encumbrance.] and
- inquiries to obtain details of all interest in the land held under the *Mining Act 1971*, the *Petroleum Act 1940* or the *Petroleum (Submerged Lands) Act 1982*, including third party interests arising by way of mortgage, caveat, sub-lease etc; and
- inquiries to obtain details of all interests in the land held under the *Fisheries Act 1982*; and
- if there is reason to suspect that there may be other interests in the land (eg riparian rights to water, right to occupy issued by agencies or pipeline licences) inquiries to obtain details of those interests in the land.

In each case copies of search documentation should be provided.

The above does not purport to be exhaustive of the inquiries that may be required in any particular circumstances.

Form 3
Native Title (South Australia) Act 1994

Application for variation or revocation of native title declaration

TO: The Registrar of the Environment, Resources and Development Court

1. **Applicant**

Name

Status

Address

[Only the following persons may apply for variation or revocation of a native title declaration: the registered representative of the native title holders, the Commonwealth Minister, the State Minister or the Registrar.]

2. **Address for service**

Address

Phone number

Facsimile number (if any)

3. **Land covered by application**

.....

[Describe the land covered by the application and provide a map showing the geographical boundaries of the land.]

4. **Registered representative of native title holders**

.....

[Identify the registered representative of the holders of native title in the land covered by the application.]

5. **Native title declaration to be varied or revoked**

.....

[Identify the native title declaration sought to be varied or revoked.]

6. **If the application is for variation of a native title declaration—terms of order sought**

.....

[Identify how it is sought to vary the declaration.]

7. **Grounds on which variation or revocation sought**

.....

[Section 25(2) of the Act provides that an application for variation or revocation of a native title declaration may only be made on the ground that—

- the declaration is no longer correct because of events that have taken place since it was made;
- or
- the interests of justice require the variation or revocation of the declaration.

Give details of the events or the reasons relied on.]

.....
Signature of applicant

Date

18.

APPENDIX

LEGISLATIVE HISTORY

Regulation 2:

substituted by 67, 1996, reg. 3