

South Australia

# Native Title (South Australia) Regulations 2016

under the *Native Title (South Australia) Act 1994*

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- 1 Revocation of *Native Title (South Australia) Regulations 2001*

## Legislative history

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### 1—Short title

These regulations may be cited as the *Native Title (South Australia) Regulations 2016*.

### 2—Commencement

These regulations will come into operation on 1 September 2016.

### 3—Interpretation

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;

*interested person* means—

- (a) the registered representative of claimants to, or holders of, native title in the land; and
- (b) a person whose interests would be affected by the existence of native title in the land (including a person who proposes to carry out mining operations on the land); and
- (c) a representative Aboriginal body; and
- (d) the State Minister; and
- (e) the Commonwealth Minister; and
- (f) the council (within the meaning of the *Local Government Act 1999*) of the area in which the land is situated;

*offshore place* has the same meaning as in the Commonwealth Act;

*prescribed print size*, in relation to a notice in a publication, means a print size at least as large as that used for most of the editorial content of the publication;

*relevant special-interest publication*, in relation to a notice, means a newspaper or magazine that—

- (a) caters mainly or exclusively for the interests of Aboriginal peoples; and
- (b) circulates in the geographical area to which the notice relates or, if the area is an offshore place, the geographical area closest to it; and
- (c) is published at least once a month.

#### **4—Commonwealth and State Ministers**

For the purposes of the Act—

- (a) the Commonwealth Minister applicable, in relation to section 207A of the Commonwealth Act, under section 19A of the *Acts Interpretation Act 1901* of the Commonwealth is designated as the Commonwealth Minister; and
- (b) the Attorney-General of the State is designated as the State Minister.

#### **5—Information to be included in State Native Title Register**

- (1) The State Native Title Register must contain the following information in relation to each decision recorded in the register:
  - (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 common law holders; and
    - (ii) a description of the nature and extent of the rights and interests conferred by the native title;

- (e) if the decision is that native title exists in land—the name and address of the body corporate representing the common law holders (and a notation of whether the body corporate holds the native title in trust).
- (2) The State Native Title Register must contain the following information in relation to each claim to native title in land registered under the Act:
  - (a) the date on which the claimant application was made;
  - (b) the date on which the claim is entered on the register;
  - (c) a description of the land covered by the claim;
  - (d) a description of the persons who it is claimed hold the native title;
  - (e) a description of the rights conferred by the native title claimed that the Registrar considers can, *prima facie*, be established.
- (3) The State Native Title Register must contain a note of each claimant application (but the applicant is not to be taken to be a registered claimant until the claim is registered), 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) The Registrar may include in the State Native Title Register such other details about claims, decisions or native title declarations as the Registrar thinks appropriate.

## **6—Fee for inspection of State Native Title Register**

- (1) For the purposes of section 17(3) of the Act, the fee for inspection of the State Native Title Register is an amount equal to the fee set under the *Environment, Resources and Development Court Act 1993* for inspection of material under section 47(1) of that Act.
- (2) The Registrar may waive, remit or reduce the fee on account of the poverty of the person by whom the fee is payable or for any other proper reason.

## **7—Forms**

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

## **8—Amendment of applications**

- (1) An application may be made at any time to amend an earlier application for a native title declaration, for variation of a native title declaration or for compensation for an act extinguishing or otherwise affecting native title in land.
- (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) However, an application may not be amended to include an area of land that was not covered by the original application unless—
  - (a) the application is a claimant application; and

- (b) the amendment includes an area of land covered by a claimant application or applications with which the application is combined.
- (4) If an amendment includes the substitution of the registered representative of the claimants or the representative in a claim for compensation (see section 27A of the Act), the Registrar must be provided with an affidavit sworn by the new representative stating the factual basis on which it is asserted that the new representative is authorised to deal with matters arising in relation to the application on behalf of the Aboriginal group concerned.
- (5) In the case of a claimant application, the fact that the Registrar is considering the claim does not prevent amendment of the application.
- (6) In the case of an application recorded or noted on the State Native Title Register, the amendment must be noted on the register.

## **9—Notice of certain applications involving native title questions**

- (1) This regulation applies to—
  - (a) an application for a native title declaration; and
  - (b) an application for variation or revocation of a native title declaration; and
  - (c) an application for compensation for an act extinguishing or otherwise affecting native title; and
  - (d) an application to amend an earlier application for a native title declaration, or for compensation for an act extinguishing or otherwise affecting native title, in a way that affects the nature or extent of a claim to native title or the area of land covered by the application.
- (2) The Registrar must as soon as practicable after receiving an application to which this regulation applies, give notice of the application and send a copy of the application (together with a copy of any statutory declaration or other document that accompanied the application) to—
  - (a) the State Minister; and
  - (b) the relevant representative Aboriginal body.
- (3) In the case of a claimant application, the Registrar must also give the State Minister and the relevant representative Aboriginal body notice of the result of the proceedings for registering the claim as soon as practicable after those proceedings are concluded.
- (4) The Registrar must, as soon as practicable after receiving an application to which this regulation applies other than a claimant application—
  - (a) give notice of the application to—
    - (i) all who hold or may hold native title in the land to which the application relates; and
    - (ii) any person who has a registered interest in the land; and
    - (iii) any person who holds a mining tenement over the land; and
    - (iv) the council (within the meaning of the *Local Government Act 1999*) of the area in which the land to which the application relates is situated; and

- (v) the Commonwealth Minister; and
  - (b) give public notice of the application.
- (5) In the case of a claimant application, the Registrar must, as soon as practicable after proceedings for registering the claim are concluded—
  - (a) give the persons and bodies referred to in subregulation (4)(a) notice of the application and the result of the proceedings; and
  - (b) give public notice of the application and the result of the proceedings.
- (6) Notice (including public notice) of an application given under this regulation—
  - (a) must include—
    - (i) details of the application; and
    - (ii) a clear description of the area to which the application relates; and
    - (iii) a statement of how further information about the application can be obtained; and
  - (b) must state that an interested person may apply to the Court—
    - (i) in the case of an application other than a claimant application—within 3 months after all requirements for service and publication of the notice of application have been completed;
    - (ii) in the case of a claimant application—within 3 months after all requirements for service of the notice of the result of the proceedings for registering the claim have been completed,to be joined as a party to the proceedings; and
  - (c) in the case of an application for a native title declaration—
    - (i) must state that a declaration that the land is subject to, or not subject to, native title may be made even though no person claiming native title in the land is joined as a party to the proceedings; and
    - (ii) must include a statement to the effect that as there can be only 1 native title declaration for an area, if a person who claims to hold native title in relation to the area does not become a party to the application, there may be no other opportunity for the Court to take into account the person's claim; and
  - (d) in the case of a non-claimant application—must include a statement to the effect that the area covered by the application may be subject to section 24FA protection (as defined in section 24FB of the Commonwealth Act) unless, at the end of the period of 3 months after all requirements for service of the notice have been completed, the area is covered by a relevant native title claim (as defined in section 24FE of the Commonwealth Act); and
  - (e) in the case of an application for compensation for an act extinguishing or otherwise affecting native title in relation to land for which a native title declaration has not been made—
    - (i) must state that at the conclusion of the proceedings the Court must make a native title declaration; and

- (ii) must state that a declaration that the land is subject to, or not subject to, native title may be made even though no person claiming native title in the land is joined as a party to the proceedings; and
  - (iii) must include a statement to the effect that as there can be only 1 native title declaration for an area, if a person who claims to hold native title in relation to the area does not become a party to the application, there may be no other opportunity for the Court to take into account the person's claim.
- (7) Public notice given under this regulation must be published (in the prescribed print size)—
  - (a) by advertisement in 1 or more newspapers that circulate generally throughout the area to which the notice relates or, if the area is an offshore place, the geographical area closest to it; and
  - (b) in a relevant special-interest publication.
- (8) The Registrar must keep available for public inspection—
  - (a) in respect of each claimant application—a record of the date on which all requirements for service of notice of the results of the proceedings for registering the claim were completed;
  - (b) in respect of each other application to which this regulation applies—a record of the date on which all requirements for service and publication of notice of the application were completed.
- (9) In this regulation—

*claimant application* includes an application for the amendment of a claimant application requiring the Registrar to reconsider the registration of a claim (see section 19A(4) of the Act).

## 10—Notice of hearing of certain native title questions

- (1) When the Court is to hear a native title question, the Registrar must give reasonable notice of the hearing to—
  - (a) all who hold or may hold native title in the land to which the proceedings relate; and
  - (b) any person who has a registered interest in the land; and
  - (c) any person who holds a mining tenement over the land; and
  - (d) the council (within the meaning of the *Local Government Act 1999*) of the area in which the land to which the proceedings relate is situated.
- (2) A notice of hearing to a person who is not a party to the relevant proceedings must state that an interested person may apply to the Court, within 3 months after all requirements for service of the notice have been completed, to be joined as a party to the proceedings.
- (3) The Registrar must keep available for public inspection, in respect of each hearing for which notice must be given under this regulation, a record of the date on which all requirements for service of notice of the hearing were completed.

- (4) This regulation does not apply in relation to a native title question that arises—
- (a) on an application of which notice has been given under regulation 9;
  - (b) in proceedings under Division 1 of Part 4 of the *Land Acquisition Act 1969*;
  - (c) in proceedings under Part 9B of the *Mining Act 1971*;
  - (d) in proceedings under Part 7 of the *Opal Mining Act 1995*.

## **11—Notification of Commonwealth Registrar**

- (1) The Registrar must, as soon as practicable after receiving any of the following applications, send a copy of the application (together with a copy of any statutory declaration or other document that accompanied the application) to the Commonwealth Registrar:
- (a) an application for a native title declaration;
  - (b) an application for variation or revocation of a native title declaration;
  - (c) an application for compensation for an act extinguishing or otherwise affecting native title;
  - (d) an application to amend an earlier application for a native title declaration, or for compensation for an act extinguishing or otherwise affecting native title, in a way that affects the nature or extent of a claim to native title or the area of land covered by the application.
- (2) The Registrar must notify the Commonwealth Registrar as soon as practicable of—
- (a) the details of any claims registered in the State Native Title Register; and
  - (b) the amendment or removal of any claims from the State Native Title Register; and
  - (c) the withdrawal or dismissal of an application for a native title declaration, variation or revocation of a native title declaration or compensation for an act extinguishing or otherwise affecting native title; and
  - (d) the proposed date of any hearing of proceedings in the Court involving a native title question (together with a brief description of the native title question involved); and
  - (e) the decision of the Court on a native title question (including, in the case of a decision recorded in the register, all of the information recorded in relation to the decision).

## **12—Principles of eligibility for nomination as registered representative of native title holders**

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 *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth; 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); 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 (although they need not be members of the same Aboriginal group if the native title declaration applies to more than 1 Aboriginal group).

### **13—Functions of registered representative of native title holders**

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 indigenous land use agreement under 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; and
  - (v) to consult with the common law holders in accordance with regulation 14; and
  - (vi) to perform any other function in relation to the native title as directed by the common law holders;
- (b) if the representative does not hold the native title in trust—
  - (i) to act as agent or representative of the common law holders of the native title in respect of matters relating to the native title; and
  - (ii) 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; and
  - (iii) to consult with the common law holders in accordance with regulation 14; and
  - (iv) to perform any other functions in relation to the native title as directed by the common law holders.

### **14—Requirement for consultation and consent**

Before a registered representative of native title holders deals with the native title or acts in a way that will affect the native title<sup>1</sup>, the representative must—

- (a) ensure that the common law holders of the native title understand the purposes and nature of the proposed dealing or act by—

- (i) consulting, and considering the views of, the representative Aboriginal body for the area in which the land concerned is situated; and
  - (ii) if the representative considers it appropriate and practicable—giving notice of those views to the common law holders; and
- (b) ensure that the common law holders of the native title consent to the proposed dealing or act by following either—
  - (i) a process of decision making recognised by the traditional laws or customs of the common law holders; or
  - (ii) 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.

**Explanatory note—**

- 1 For example, by the representative entering into an indigenous land use agreement (either as trustee, agent or representative) under the Commonwealth Act to surrender the native title or to authorise an act that will affect the native title.

## **15—Evidence of consultation and consent**

- (1) Subject to this regulation, 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 proposed dealing with the native title and have consented to the dealing (as required by these regulations); or
  - (b) that the relevant representative Aboriginal body has been consulted about a proposed dealing with native title and its views considered by the representative (as required by these regulations),will, in the absence of proof to the contrary, be taken to be proof of the matters so certified.
- (2) In the case of a certificate certifying that the common law holders have been consulted about a proposed dealing with native title and have consented to the dealing, the members signing the certificate must—
  - (a) if fewer than 5 members are common law holders of the native title concerned—include those common law holders;
  - (b) in any other case—each be a common law holder of the native title concerned.
- (3) In the case of a certificate certifying that the relevant representative Aboriginal body has been consulted about a proposed dealing with native title and its views considered by the representative, the certificate must be accompanied by a certificate signed by an authorised member of the relevant representative Aboriginal body certifying that the body has been consulted about the proposed dealing with native title.

- (4) If native title is dealt with by the registered representative of the native title holders, the representative must, at the written request of a person who has a substantial interest in the matter, ensure that the person is provided with copies (certified by the representative to be true and correct copies) of certificates of the kind referred to in this regulation.
- (5) In any proceedings a copy of a certificate of a kind referred to in this regulation certified by the registered representative of the native title holders to be a true and correct copy is to be given the same status as the original certificate.

**16—Service where existence of native title, or identity of native title holders, uncertain**

- (1) For the purposes of section 30(1)(a)(i) of the Act, notice of the nature and effect of a right to negotiate notice (within the meaning of that section) must be given by publishing the prescribed information (in the prescribed print size)—
  - (a) by advertisement in 1 or more newspapers that circulate generally throughout the area to which the notice relates or, if the area is an offshore place, the geographical area closest to it; and
  - (b) in a relevant special-interest publication.

- (2) In this regulation—

*prescribed information* means—

- (a) the name and address for service of the person giving notice; and
- (b) the information required to be included in the right to negotiate notice by or under the Act under which the notice is given; and
- (c) a clear description of the nature and effect of the right to negotiate notice; and
- (d) a statement of how further information can be obtained.

## Schedule 1—Forms

### Form 1

*Native Title (South Australia) Act 1994*

#### **Native title declaration application—claimant application**

Name of applicant(s) .....

Address(es) of applicant(s) .....

.....  
Address for service .....

.....  
Note—This application must be accompanied by a statutory declaration.

Section 18A(2)(k) of the Act requires the application to be accompanied by a statutory declaration verifying—

- the information contained in the application; and
- that the applicant is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to the application on behalf of the group; and
- that the applicant believes that the native title claimed has not been extinguished and that none of the area covered by the application is the subject of a native title declaration.

#### **A Details of the claim**

1 The applicant applies, under section 18 of the *Native Title (South Australia) Act 1994*, for a native title declaration.

2 The applicant is entitled to make this application as a member of an Aboriginal group claiming native title in the land who is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to the application on behalf of the group.

The factual basis on which this is asserted is as follows:

.....  
.....  
.....  
.....

3 The Schedules to this application contain the following information:

*Schedule A*—A description of the persons comprising the Aboriginal group claiming native title.

The description must set out the names of the persons comprising the group or otherwise define the group sufficiently clearly so that it can be ascertained whether any particular person is a member of the group.

*Schedule B*—A definition of the land to which the application relates.

The land must be defined with sufficient particularity to enable the boundaries of the area covered by the application and any areas within those boundaries that are not covered by the application to be readily identified.

*Schedule C*—A map showing the boundaries of the area covered by the application.

*Schedule D*—Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land.

*Schedule E*—A statement of the nature of the rights conferred by the native title claimed and the nature of activities that may be carried out pursuant to those rights.

*Schedule F*—A statement of the factual basis on which native title is asserted and, in particular, the factual basis on which it is asserted that—

- the Aboriginal group has, and its predecessors had, an association with the area; and
- there exist traditional laws acknowledged by, and traditional customs observed by, the Aboriginal group that give rise to the native title; and
- the Aboriginal group has continued to hold the native title in accordance with those traditional laws and customs.

*Schedule G*—Details of any activities currently carried on in relation to the land by the Aboriginal group.

*Schedule H*—Details of any other application, of which the applicant is aware, for a judicial determination of native title in the land or a determination of compensation in relation to native title in the land.

*Schedule I*—Details of notices, of which the applicant is aware, about matters that may be the subject of negotiation with the applicant if the claim is registered.

Examples—

- A notice under section 29 of the Commonwealth Act.
- A notice of the initiation of negotiations under Part 9B of the *Mining Act 1971* or Part 7 of the *Opal Mining Act 1995*.
- A notice of the intention to acquire land under the *Land Acquisition Act 1969* in a case to which Part 4 Division 1 of that Act applies.

*Schedule J*—A draft of the order sought if the application is unopposed.

*Schedule K*—The name of each representative Aboriginal body for the area covered by the application.

*Schedule L*—For the area covered by the application, details of—

- any area for which a pastoral lease is held by or on behalf of the members of the Aboriginal group;
- any area leased, held or reserved for the benefit of Aboriginal peoples that is occupied by or on behalf of the members of the Aboriginal group;
- any vacant Crown land occupied by the members of the Aboriginal group;
- any area mentioned in this Schedule over which the extinguishment of native title is required to be disregarded by section 47, 47A or 47B of the *Native Title Act 1993* (Cwth).

[The following Schedules are not required, but will be relevant when the Registrar considers the claim for registration.]

*Schedule M*—Details of any traditional physical connection with any of the land covered by the application by any member of the Aboriginal group.

*Schedule N*—Details of circumstances in which access to the area by a member or a parent of a member of the Aboriginal group has been prevented.

*Schedule O*—Details of the membership of the applicant or any other member of the Aboriginal group in another Aboriginal group—

- registered as claimants to native title in the whole or part of the area covered by this application; or
- on whose behalf an application for a native title declaration has been made in relation to native title in the whole or part of the area covered by this application.

*Schedule P*—Details of any claim by the Aboriginal group of exclusive possession of all or part of an offshore place (within the meaning of the *Native Title Act 1993* (Cwth)).

*Schedule Q*—Details of any claim by the Aboriginal group of ownership of minerals, petroleum or gas wholly owned by the Crown.

*Schedule R*—If the application is accompanied by a certificate of the representative Aboriginal body for the area covered by the application (or, if the body is not the representative body for the whole of the area, certificates of representative Aboriginal bodies that together are representative bodies for the whole of the area) certifying that the applicant is a member of the Aboriginal group and is authorised by the group to make the application and to deal with matters arising in relation to the application on behalf of the group, the certificate or certificates should be included in this Schedule.

*Schedule S*—If the application is an amended application, details of the difference between this application and the original application.

*Schedule T*—Any other relevant information that the applicant wants to provide.

- 4 If the Aboriginal group for which the native title declaration is sought does **not** seek registration of the claim made in the application, cross the following box
- 5 If the applicant seeks an order that the proceedings be referred to the Supreme Court, cross the following box

Date: .....

Signature: .....

*[Applicant or applicant's solicitor]*

**B Filing and service**

This application is filed by .....

whose address for service is .....

.....

## Form 2

*Native Title (South Australia) Act 1994*

### Native title declaration application—non-claimant application

Name of applicant(s) .....

Address(es) of applicant(s) .....

[If the applicant is an individual, give the place of residence or business. If the applicant is a corporation, give the principal place of business.]

Address for service .....

Note—This application must be accompanied by a statutory declaration verifying the information contained in the application (see section 18A(4)(e) of the Act).

#### A Details of the declaration sought

1 The applicant applies, under section 18 of the *Native Title (South Australia) Act 1994*, for a native title declaration.

2 The Schedules to this application contain the following information:

*Schedule A*—A definition of the land to which the application relates.

The land must be defined with sufficient particularity to enable the boundaries of the area covered by the application and any areas within those boundaries that are not covered by the application to be readily identified.

*Schedule B*—A map showing the boundaries of the area covered by the application.

*Schedule C*—A statement of the grounds on which the declaration is sought.

*Schedule D*—All information known to the applicant about the title to, and tenure of, the land and the history of the title to, and tenure of the land, including information about present and former association by Aboriginal peoples with the land.

*Schedule E*—Details of any interest held by the applicant in the area covered by the application and any document (including a document of title) or other material that is evidence of that interest.

*Schedule F*—A draft of the order sought if the application is unopposed.

*Schedule G*—Any other relevant information that the applicant wants to provide.

3 If the applicant seeks an order that the proceedings be referred to the Supreme Court, cross the following box

Date: .....

Signature: .....

[Applicant or applicant's solicitor]

#### B Filing and service

This application is filed by .....

whose address for service is .....

.....

## Form 3

*Native Title (South Australia) Act 1994*

### Application for variation or revocation of native title declaration

Name of applicant(s).....

Address(es) of applicant(s).....

.....

Address for service .....

.....

#### A Details of the order sought

1 The applicant applies, under section 25 of the *Native Title (South Australia) Act 1994*, for variation\*/revocation of a native title declaration.

2 The applicant is entitled to make this application as the registered representative of the holders of native title in the land to which the declaration relates\*/the Commonwealth Minister\*/the State Minister\*/the Registrar\*.

3 The Schedules to this application contain the following information:

*Schedule A*—A definition of the land to which the application relates.

The land must be defined with sufficient particularity to enable the boundaries of the area covered by the application and any areas within those boundaries that are not covered by the application to be readily identified.

*Schedule B*—A map showing the boundaries of the area covered by the application.

*Schedule C*—Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land covered by the application.

*Schedule D*—The name of each representative Aboriginal body for the area covered by the application.

*Schedule E*—A copy of the native title declaration.

*Schedule F*—Details of events (if any) that have taken place since the native title declaration was made which make that declaration no longer correct.

*Schedule G*—Details of the grounds (if any) for varying or revoking the declaration in the interests of justice.

*Schedule H*—For an application for variation of a native title declaration, a draft of the order sought.

*Schedule I*—Any other relevant information that the applicant wants to provide.

Date: .....

Signature: .....

[Applicant or applicant's solicitor]

\*Delete the inapplicable.

#### B Filing and service

This application is filed by .....

whose address for service is .....

.....

## Form 4

*Native Title (South Australia) Act 1994*

### **Statement of claim by a person other than the registered representative of native title holders for compensation for an act extinguishing or otherwise affecting native title**

Name of representative(s) making claim .....

Address(es) of representative(s) .....

.....

Address for service .....

.....

Note—Section 27A(2) of the Act requires the statement of claim to be accompanied by an affidavit sworn by the person bringing the claim (the representative)—

- stating that the representative believes that native title exists or existed in relation to the area to which the claim relates; and
- stating that the representative believes that all of the statements made in the statement of claim are true; and
- stating that the representative is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to it and stating the basis of the authorisation.

#### **A Details of the claim**

1 As representative of the Aboriginal group described in Schedule A, the representative claims compensation for an act extinguishing or otherwise affecting native title.

2 The representative is entitled to make the application for compensation as a person authorised by the Aboriginal group to make the application and to deal with matters arising in relation to it on behalf of the group.

The factual basis on which this is asserted is as follows:

.....  
.....  
.....  
.....

3 The Schedules to this statement of claim contain the following information:

*[Schedules A to N must be included.]*

*Schedule A*—A description of the persons comprising the Aboriginal group claiming compensation.

The description must set out the names of the persons comprising the group or otherwise define the group sufficiently clearly so that it can be ascertained whether any particular person is a member of the group.

*Schedule B*—A definition of the land to which the native title in respect of which the application for compensation is made relates or related.

The land must be defined with sufficient particularity to enable the boundaries of the area covered by the application and any areas within those boundaries that are not covered by the application to be readily identified.

*Schedule C*—A map showing the boundaries of the area covered by the application.

*Schedule D*—Details and results of all searches carried out to determine the existence of any current or former non-native title rights and interests in relation to the land, including copies of—

- all searches of official title registers (such as the Register Book and Register of Crown Leases); and
- all searches conducted with public bodies and authorities,

that identify current or former non-native title rights and interests in relation to the land.

*Schedule E*—A statement of the nature of the rights conferred by the native title in respect of which the application for compensation is made and the nature of activities that may be, or may have been, carried out pursuant to those rights.

*Schedule F*—The name of each representative Aboriginal body for the area covered by the application.

*Schedule G*—A statement of the factual basis on which native title is asserted and, in particular, the factual basis on which it is asserted that—

- the Aboriginal group has or had, and its predecessors had, an association with the area; and
- there exists or existed traditional laws acknowledged by, and traditional customs observed by, the Aboriginal group that give or gave rise to the native title; and
- the Aboriginal group has or had continued to hold the native title in accordance with those traditional laws and customs.

*Schedule H*—Details of any activities that are or were carried on in relation to the land by the Aboriginal group.

*Schedule I*—Details of the act which it is claimed extinguished or affected the native title, including—

- the name of the person or body who carried out or was responsible for the act;
- whether the act has been validated and, if so, the details of how it has been validated.

*Schedule J*—Details of the basis for the compensation claim, including reference to any Act which it is claimed provides an entitlement to compensation.

*Schedule K*—Details of any other application, of which the applicant is aware, for a judicial determination of native title in the land or a determination of compensation in relation to native title in the land.

*Schedule L*—Details of notices, of which the applicant is aware, about matters that may be the subject of negotiation with registered claimants of native title in the land.

Examples—

- A notice under section 29 of the Commonwealth Act.
- A notice of the initiation of negotiations under Part 9B of the *Mining Act 1971* or Part 7 of the *Opal Mining Act 1995*.
- A notice of the intention to acquire land under the *Land Acquisition Act 1969* in a case to which Part 4 Division 1 of that Act applies.

*Schedule M*—Details of any compensation received by the Aboriginal group or to which the Aboriginal group may be entitled under any agreement or award because of the act or a related act.

*Schedule N*—Whether non-monetary compensation is claimed, and, if so, the nature of the non-monetary compensation claimed.

*[The following Schedules are not required.]*

*Schedule O*—Details of any traditional physical connection with any of the land covered by the application by any member of the Aboriginal group.

*Schedule P*—Details of circumstances in which access to the area by a member or a parent of a member of the Aboriginal group has been prevented.

*Schedule Q*—Any other relevant information that the representative wants to provide.

Date: .....

Signature: .....

*[Representative or representative's solicitor]*

## **B Filing and service**

This statement of claim is filed by .....

whose address for service is .....

.....

## **Schedule 2—Revocation of Native Title (South Australia) Regulations 2001**

### **1—Revocation of Native Title (South Australia) Regulations 2001**

The *Native Title (South Australia) Regulations 2001* are revoked.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations

Year	No	Reference	Commencement
2016	194	<i>Gazette 18.8.2016 p3236</i>	1.9.2016: r 2