



Western Australia

Native Title (State Provisions) Act 1999

## **Native Title (State Provisions) Regulations 2000**



## **Native Title (State Provisions) Regulations 2000**

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**Defined terms**

## **Native Title (State Provisions) Regulations 2000**

Made by the Administrator in Executive Council.

### **1. Citation**

These regulations may be cited as the *Native Title (State Provisions) Regulations 2000*.

### **2. Notice of later closing day fixed under section 2.11(2)**

If under section 2.11(2) of the Act the Government party fixes a later closing day for the lodgment of objections to the doing of a Part 2 act the Government party must —

- (a) give public notice of the later closing day by advertisement in a newspaper circulating generally throughout the State; and
- (b) give notice in writing of the later closing day to any person to whom notice of the act must be given under section 2.12(2) of the Act.

### **3. Prescribed information and requirements for purposes of section 2.15**

- (1) For the purposes of section 2.15(1)(a) of the Act other information that must be included in a notice is that objections may be lodged by a facsimile transmission.
- (2) For the purposes of section 2.15(1)(b)(ii) of the Act a notice under Part 2 Division 3 of the Act may be given in a notice of intention under section 170(1) of the *Land Administration*

*Act 1997* if the act to be done is the taking of an interest in land under that Act.

**4. Form and lodgment of form for objection under section 2.17**

- (1) For the purposes of section 2.17 of the Act, Form 1 in Schedule 1 is prescribed as the form in which objections are to be lodged.
- (2) An objection lodged with the Government party under section 2.17 of the Act may be lodged by a facsimile transmission.
- (3) If an objection is lodged by facsimile transmission, the objection must also be served by post on the Government party within 7 days of the day on which it is lodged by a facsimile transmission.
- (4) If the Government party receives an objection, the Government party is to send an acknowledgment of the receipt of the objection to the objector.

**5. Form and lodgment of form for application under section 2.27(2)(b)**

- (1) For the purposes of section 2.46 of the Act, Form 2 in Schedule 1 is prescribed as the form in which an application under section 2.27(2)(b) of the Act is to be made.
- (2) The form in which an application under section 2.27(2)(b) of the Act is made is to be lodged with the Commission.

**6. Material and fees to accompany application under section 2.27(2)(b)**

- (1) For the purpose of section 2.47 of the Act, the prescribed document that must accompany the application is a document setting out —
  - (a) endeavours made by the consultation party that lodged the application; and

- (b) any other endeavours of which the consultation party that lodged the application is aware that have been made,

to resolve the issues on which the objection is based.

- (2) For the purpose of section 2.47 of the Act, the prescribed fee is \$100 for each application.

**7. Notification of dismissal of objection under section 2.29, 3.41, or 4.24**

The notification under section 2.29(2), 3.41(2), or 4.24(2) of the Act by the Commission to an objector of the dismissal of his or her objection must —

- (a) be in writing;
- (b) state the findings of facts on which it is based; and
- (c) give reasons for the decision.

**8. Contents of determination under section 2.38 or 4.33**

A determination made by the responsible Minister under section 2.38(1) or 4.33(1) of the Act must —

- (a) state the findings of facts on which it is based; and
- (b) give reasons for the decision.

**9. Notice of later closing day fixed under section 3.9(2)**

If under section 3.9(2) of the Act the Government party fixes a later closing day for the lodgment of objections to the doing of a Part 3 act the Government party must —

- (a) give public notice of the later closing day by advertisement in a newspaper circulating generally throughout the State;
- (b) give public notice of the later closing day by advertisement in a newspaper or magazine that —
  - (i) caters mainly or exclusively for the interests of Aboriginal peoples;

- (ii) circulates in the area that may be affected by the act; and
- (iii) is published at least once a month;  
and
- (c) give notice in writing of the later closing day to any person to whom notice of the act must be given under section 3.10(2) of the Act.

**10. Prescribed information and requirements for purposes of section 3.14**

- (1) For the purposes of section 3.14(1)(a) of the Act other information that must be included in a notice is that objections may be lodged by a facsimile transmission.
- (2) For the purposes of section 3.14(1)(b)(ii) of the Act a notice under Part 3 Division 3 of the Act may be given in a notice of intention under section 170(1) of the *Land Administration Act 1997* if the act to be done is the taking of an interest in land under that Act.

**11. Form and lodgment of form for objection under section 3.16**

- (1) For the purposes of section 3.16 of the Act, Form 1 in Schedule 1 is prescribed as the form in which objections are to be lodged.
- (2) An objection lodged under section 3.16 of the Act with the Government party may be lodged by a facsimile transmission.
- (3) If an objection is lodged by facsimile transmission, the objection must also be served by post on the Government party within 7 days of the day on which it is lodged by a facsimile transmission.
- (4) If the Government party receives an objection, the Government party is to send an acknowledgment of the receipt of the objection to the objector.

**12. Contents of determination under section 3.29**

A determination made by the responsible Minister under section 3.29(2) of the Act must —

- (a) be in writing;
- (b) state the findings of facts on which it is based; and
- (c) give reasons for the decision.

**13. Form and lodgment of form for application under section 3.39(2)(b)**

- (1) For the purposes of section 3.58 of the Act, Form 2 in Schedule 1 is prescribed as the form in which an application under section 3.39(2)(b) of the Act is to be made.
- (2) The form in which an application under section 3.39(2)(b) of the Act is made is to be lodged with the Commission.

**14. Material and fees to accompany application under section 3.39(2)(b)**

- (1) For the purpose of section 3.59 of the Act, the prescribed document that must accompany the application is a document setting out —
  - (a) endeavours made by the negotiation party that lodged the application; and
  - (b) any other endeavours of which the negotiation party that lodged the application is aware that have been made,to resolve the issues on which the objection is based.
- (2) For the purpose of section 3.59 of the Act, the prescribed fee is \$100 for each application.

**15. Contents of declaration under section 3.51**

A declaration made by the responsible Minister under section 3.51(1) of the Act must —

- (a) state the findings of facts on which it is based; and

- (b) give reasons for the decision.

**16. Notice of later closing day fixed under section 4.7(2)**

If under section 4.7(2) of the Act the Government party fixes a later closing day for the lodgment of objections to the doing of a Part 4 act the Government party must —

- (a) give public notice of the later closing day by advertisement in a newspaper circulating generally throughout the State; and
- (b) give notice in writing of the later closing day to any person to whom notice of the act must be given under section 4.8(2) of the Act.

**17. Prescribed information and requirements for purposes of section 4.10**

- (1) For the purposes of section 4.10(1)(a) of the Act other information that must be included in a notice is that objections may be lodged by a facsimile transmission.
- (2) For the purposes of section 4.10(1)(b)(ii) of the Act a notice under Part 4 Division 2 of the Act may be given in a notice of intention under section 170(1) of the *Land Administration Act 1997* if the act to be done is the taking of an interest in land under that Act.

**18. Form and lodgment of form for objection under section 4.11**

- (1) For the purposes of section 4.12 of the Act, Form 1 in Schedule 1 is prescribed as the form in which objections are to be lodged.
- (2) An objection lodged under section 4.12 of the Act with the Government party may be lodged by a facsimile transmission.
- (3) If an objection is lodged by facsimile transmission, the objection must also be served by post on the Government party within 7 days of the day on which it is lodged by a facsimile transmission.

- (4) If the Government party receives an objection, the Government party is to send an acknowledgment of the receipt of the objection to the objector.

**19. Form and lodgment of form for application under section 4.22(2)(b)**

- (1) For the purposes of section 4.41 of the Act, Form 2 in Schedule 1 is prescribed as the form in which an application under section 4.22(2)(b) of the Act is to be made.
- (2) The form in which an application under section 4.22(2)(b) of the Act is made is to be lodged with the Commission.

**20. Material and fees to accompany application under section 4.22(2)(b)**

- (1) For the purpose of section 4.42 of the Act, the prescribed document that must accompany the application is a document setting out —
  - (a) endeavours made by the consultation party that lodged the application; and
  - (b) any other endeavours of which the consultation party that lodged the application is aware that have been made,

to resolve the issues on which the objection is based.

- (2) For the purpose of section 4.42 of the Act, the prescribed fee is \$100 for each application.

**21. Form and lodgment of form for application under section 5.2(4)**

- (1) An application under section 5.2(4) of the Act is to be made in Form 3 in Schedule 1.
- (2) The form in which an application under section 5.2(4) of the Act is made is to be lodged with the Commission.

**22. Form of and lodgment of application under section 5.2(6)**

An application under section 5.2(6) of the Act is to be made in writing and be lodged with the Commission.

**23. Amount paid and held in trust under section 5.9(2)**

An amount paid to and held in trust by the Commission under section 5.9(2) of the Act is to be held in an account established by the Treasurer under section 9(2)(c)(i) of the *Financial Administration and Audit Act 1985*.

**24. Form of summons issued by Commission**

A summons issued by the Commission under section 6.30 of the Act is to be in the form of Form 4 in Schedule 1.

**25. Witness fees and allowances**

A person who appears before the Commission under section 6.30 of the Act is entitled to receive from the Commission a fee or allowance in accordance with Schedule 2.

**26. Completion of forms**

A form must be completed in accordance with such directions and instructions as are specified in, or relate to, the form.

**27. Transitional: programme for dealing with existing mining applications (Schedule 3 of the Act clause 3)**

- (1) In this regulation —  
***representative body area*** means an area for which the Commonwealth Minister has invited applications under section 203AA of the NTA from eligible bodies for recognition as the representative body for that area.
- (2) To enable the giving of notices under sections 2.12 and 3.10 of the Act of Part 2 acts and Part 3 acts to which existing mining applications relate to be spread over a period of time, the

number of acts of which notice is given by the Government party is not to exceed 200 in any 14 day period.

- (3) For the purpose of subregulation (2), the giving of notices of acts relating to a representative body area in the State specified in column 1 of the Table to this subregulation is not in any 14 day period to exceed the number in column 2 of that Table.

**Table**

<b>Representative body area</b>	<b>Number of acts</b>
Kimberley	25
Pilbara	25
Central Desert	50
Geraldton	40
Goldfields	100
Southwest	25

- (4) For the purposes of subregulations (2) and (3), if a notice is in respect of more than one act in relation to a proponent in contiguous areas in a representative body area, the acts are to be counted as one act.

**28. Transitional: section 24MD(6B) matter (Schedule 3 of the Act Division 2)**

- (1) A section 24MD(6B) matter is to be dealt with as if it is a Part 4 act that consists of —
- (a) a compulsory acquisition to which section 24MD(6B)(a) of the NTA applies; or
  - (b) the creation or variation of a right to mine that is referred to in section 24MD(6B)(b) of the NTA,
- as the case requires.
- (2) A notification given under section 24MD(6B) of the NTA is to be dealt with as if it is a notice given under section 4.6(4) of the Act.
- (3) An objection under section 24MD(6B) of the NTA is to be dealt with as if it is an objection made under section 4.11 of the Act.

- (4) A proceeding that is included in the definition of section 24MD(6B) matter under clause 4(2) and (3) of Schedule 3 to the Act that has been commenced before the commencement of Part 4 of the Act may be dealt with by the Commission under Part 4 Division 4 of the Act.
- (5) A section 24MD(6B) matter has continuing effect as if it had occurred or come into existence for the purposes of Part 4 of the Act and despite the fact that the matter does not fully comply with a requirement of that Part.

**Schedule 1 — Forms**

[rr. 4, 5, 11, 13, 18, 19, 21, 24]

Form 1

WESTERN AUSTRALIA

*Native Title (State Provisions) Act 1999*

(ss. 2.17, 3.16 & 4.12)

**OBJECTION** No.

(a) Specify name of Government party doing act	To: _____ (The Government Party)
(b) Insert particulars of future acts objected to	The undersigned objects to — (b)
(c) Set out grounds for objection, including how the doing of the act would be likely to affect the objector's registered native title rights and interest in relation to the relevant land	For the following reasons — (c)
	And pending the hearing of this objection, requires you to withhold your determination of the act until the Commission has made a recommendation, determination, or one of the circumstances provided for in section 2.6, 3.5 or 4.3, as the case may be, has been satisfied.

**Schedule 1**      Forms

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<p>(d) Full name and address, telephone, facsimile, and email address (optional) of objector and legal representative (if any).</p>	<p>(d)</p>
<p>(e) Specify whether objection is lodged on behalf of a registered native title claimant (specify claim name and number) or registered native title body corporate (specify date and reference number etc. of determination)</p>	<p>(e)</p>

DATED this          day of          , 2

(f) Signature of objector or agent      (f) \_\_\_\_\_

<p>OFFICE USE</p>		<p>Received at . . . . . on . . . . .  ..... (Government Party)</p>	
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- NOTE: (1) Objections cannot be lodged after the closing date. However, the closing date may be extended in exceptional circumstances where application by a person is made to the Native Title Commission before the closing date (see *Native Title (State Provisions) Act 1999* sections 2.18, 3.17 and 4.13).
- (2) The period to object to a Part 2 or Part 3 act will also be extended by a period of one month in respect of a party who lodges a native title determination application on or before the closing date (see *Native Title (State Provisions) Act 1999* sections 2.18(3) and 3.17(3)).

**Schedule 1**    Forms

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Form 2

WESTERN AUSTRALIA

*Native Title (State Provisions) Act 1999*

(ss. 2.46, 3.58 & 4.41)

**APPLICATION FOR HEARING AND  
DETERMINATION OF OBJECTION TO  
FUTURE ACT PROPOSAL**

<p>(a) Insert objection number</p> <p>(b) Insert details of Government act to which the application relates (i.e. type and number of acts)</p>	<p>The undersigned requests the hearing and recommendation or determination, as the case may be, of —</p> <p>(a)</p> <p>(b)</p>
<p>(c) Set out brief details of endeavours made by the applicant, or of which the applicant is aware, to resolve the issues on which the objection was based</p>	<p>For the following reasons —</p> <p>(c)</p> <p>(detailed statement to be attached in accordance with regulation 6, 14, or 20, as the case may be). And following the hearing of this application requires the Commission to make a recommendation or determination.</p>
<p>(d) Full name and address, telephone, facsimile, and email address (optional) of consultation or negotiation party making application</p>	<p>(d)</p>

	If application is lodged by a registered native title claimant, state claim name and number. If application is lodged on behalf of a registered native title body corporate, state details of determination (date, reference number etc.).
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DATED this        day of        , 2

(e) Signature of consultation or negotiation party or agent        (e) \_\_\_\_\_

OFFICE USE	This application will be heard at the Commission at at the hour of        m, on the day of        2		
		Received at . . . . . m, on . . . . . with the fee of \$	

Form 3

WESTERN AUSTRALIA

*Native Title (State Provisions) Act 1999*

(s. 5.2(4))

**APPLICATION FOR  
COMPENSATION** No.

(a) Insert particulars of Part 2 act, Part 3 act, or Part 4 act and native title rights and interests claimed to be affected	The undersigned requests the determination of compensation in respect to: (a)
(b) Set out brief details of loss, diminution, impairment or other effect of the act on native title rights and interests	for the following reasons — (b)
(c) Set out brief details of any monetary or non-monetary compensation already received	(c)  [statement to be attached showing full details in respect to (b) and (c) above]
(d) Provide details of native title determination viz. Federal Court ref. no., date, etc.	(d)

(e) Full name and address, telephone, facsimile, and e-mail address (optional) of registered native title body corporate and legal representative (if any)	(e) _____
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DATED this        day of        , 2

(f) Signature of registered native title body corporate or agent        (f) \_\_\_\_\_

OFFICE USE		Received at ..... on .....  ..... (Native Title Commission)	
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Form 4

WESTERN AUSTRALIA

*Native Title (State Provisions) Act 1999*

(s. 6.30)

**SUMMONS**

(a) Full name and address of person being summoned	In the Native Title Commission at — (a)
(b) Place of hearing	YOU are summoned to appear before the Native Title Commission at — (b)
(c) Time and date of hearing	(c) at    a.m./p.m. on the    day of    2
(d) Matters for which person is being summoned	to give evidence/produce specific documents in relation to — (d)  specific documents required are —

DATED this    day of    , 2

.....  
Chief Commissioner

WITNESS FEES will be considered in accordance with regulation 25 of the *Native Title (State Provisions) Regulations 2000*.

**Schedule 2 — Witness fees and allowances**

[r. 25]

**1. Daily allowance**

- (1) A person carrying on a profession or business as a principal is entitled to a daily allowance not exceeding \$97.00.
- (2) A person other than that referred to in subclause (1) is entitled to a daily allowance not exceeding \$78.00.
- (3) In fixing an allowance under subclause (2), the Commission may have regard to the amount of salary or wages (if any) actually lost by the witness.

**2. Travelling expenses**

- (1) A witness is entitled to be paid any bus or rail fares incurred by him or her.
- (2) If the Commission is satisfied that bus or rail transport is not reasonably convenient a witness is entitled to be paid an allowance for road travel for the distance travelled each way in respect of his or her attendance at a rate of 37.5 cents per kilometre.
- (3) If the Commission gives prior approval to a witness travelling by air, the witness is entitled to obtain the cost of the air fare from the Commission.

**3. Expenses for meals**

If a witness —

- (a) is required to travel a distance exceeding 40 km from his or her place of residence; and
- (b) is required to leave his or her residence before 7 a.m.,

the witness is entitled to the following allowances for meals in respect of the meals that are normally taken during the time of his or her travelling and attendance and the cost of which has been paid for by the witness —

Breakfast	\$6.00
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**Schedule 2**      **Witness fees and allowances**

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Lunch	\$6.00
Dinner	\$12.00.

**4. Overnight accommodation (bed only)**

If a witness is required to remain away from his or her residence overnight he or she is entitled to be paid an allowance for the cost of accommodation at an hotel, motel, or other place to a maximum of \$90.00 per day.

**Notes**

- <sup>1</sup> This is a compilation of the *Native Title (State Provisions) Regulations 2000* and includes the amendments referred to in the following Table.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Native Title (State Provisions) Regulations 2000</i>	4 Jul 2000 p. 3555-77	4 Jul 2000

Defined terms

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
representative body area .....	27(1)