

Commonwealth  
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# Native Title (Consultation and Reporting) Determination 2011<sup>1</sup>

*Native Title Act 1993*

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I, NICOLA ROXON, Attorney-General, make this Determination under section 24JAA of the *Native Title Act 1993*.

Dated 2011

**[DRAFT ONLY - NOT FOR SIGNATURE]**

Attorney-General

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**CONSULTATION DRAFT ONLY**

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## Part 1 Preliminary

### 1 Name of Determination

This Determination is the *Native Title (Consultation and Reporting) Determination 2011*.

### 2 Commencement

This Determination commences on the day after it is registered.

### 3 Definitions

In this Determination:

*Act* means the *Native Title Act 1993*.

*action body* has the meaning given by paragraph 24JAA (1) (c) of the Act.

*consultation meeting* means a meeting, including a meeting attended by some or all of the participants by teleconference or videoconference:

- (a) attended by the action body, native title party and any person included in the consultation under subsection 8 (2) (the *participants*); and
- (b) at which the action body provides information and invites discussion about ways of minimising the future act's impact on registered native title rights and interests in relation to land or waters in the area and, if relevant, any access to the land or waters or the way in which anything authorised by the act might be done.

*consultation period* has the meaning given by subsection 24JAA (19) of the Act.

*consultation process* means a consultation conducted under subsection 24JAA (14) of the Act with a native title party in relation to a future act.

*native title party* — see section 4.

*participants* — see paragraph (a) of the definition of *consultation meeting* in this section.

*registered native title rights and interests* has the meaning given by subsection 24JAA (19) of the Act.

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**Section 4**

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## **Part 2                      Consultation requirements**

### **4                      Application of Part 2**

This Part applies if an action body is required under subsection 24JAA (14) of the Act to consult with a registered native title claimant or a registered native title body corporate (a *native title party*) that has made a request under subsection 24JAA (13) of the Act to be consulted about the doing of a future act.

### **5                      Action body must comply with consultation requirements**

For subsection 24JAA (15) of the Act, the action body must comply with sections 6 to 10.

### **6                      When consultation must commence**

The action body must begin consultation within 7 days after the day the action body receives the request.

*Examples — form of consultation*

- 1 A consultation meeting, including a face-to-face, teleconference or video-conference meeting.
- 2 Consultation by exchange of written correspondence, including graphic material.

### **7                      Giving further information to native title party**

- (1) If the native title party requests further information about the future act and its possible impact, and the request is reasonable, the action body must give the information to the native title party.
- (2) In determining whether the request is reasonable, the following matters are to be taken into account:
  - (a) whether the information sought is relevant to the future act and its possible impact;
  - (b) whether the request clearly identifies what further information is sought;
  - (c) the time available before the end of the consultation period;
  - (d) whether the action body has the information;
  - (e) any other relevant matter.
- (3) The action body must give the information mentioned in subsection (1) to the native title party:
  - (a) in writing; and
  - (b) within a reasonable period for the native title party to consider the information before the end of the consultation period, taking into account relevant circumstances including:

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**Section 10**

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- (i) how long it is likely to take for the information to reach the native title party; and
- (ii) if a consultation meeting is to be held and the request is made before the meeting — the time between the request and the meeting; and
- (iii) the time remaining before the end of the consultation period.

**8 Consultation with more than one party**

- (1) If more than one native title party has made a request under subsection 24JAA (13) of the Act to be consulted about the doing of a particular future act, the action body may, if each of the native title parties agrees, conduct a joint consultation about the future act with the native title parties.
- (2) Any person other than the native title party and action body may be included in the consultation if the action body and the native title party, or for a joint consultation, each native title party, agree to the person being included.

**9 Interpreters**

- (1) If the native title party asks that an interpreter attend the consultation meeting, and the request is reasonable, the action body must arrange for an interpreter acceptable to the native title party to attend.
- (2) In determining whether the request for an interpreter is reasonable, the following matters are to be taken into account:
  - (a) the availability of an acceptable interpreter;
  - (b) the time available before the end of the consultation period.

**10 Notice of consultation meeting**

- (1) If a consultation meeting is to be held, the action body must give written notice of the meeting to:
  - (a) the native title party; and
  - (b) if the action body and the native title party have agreed that any other person be included in the consultation — the other person.
- (2) The notice must state:
  - (a) the date, time and place of the meeting; and
  - (b) the parties invited to attend the meeting; and
  - (c) the issues the action body would like to discuss at the meeting.
- (3) The notice must be given not later than 7 days before the meeting date, unless the native title party agrees to a shorter period.

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**Section 11**

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## **Part 3                      Consultation reporting requirements**

### **11                      Application of Part 3**

This Part applies if an action body is required under subsection 24JAA (16) of the Act to give a report to the Commonwealth Minister about things done in relation to a future act.

### **12                      Reporting requirements**

For subparagraph 24JAA (16) (a) (i) of the Act, the action body must comply with sections 13 to 20.

### **13                      How and when report is to be given to Minister**

- (1) The action body must give the report to the Commonwealth Minister by:
  - (a) sending a copy of the report to the email address mentioned for that purpose on the website <http://www.ag.gov.au>; or
  - (b) giving the report by another method agreed to by a person employed by the Department at Executive Level 2 or above.
- (2) The action body must give the report to the Minister not later than 14 days before:
  - (a) for a future act mentioned in subparagraph 24JAA (1) (c) (i) of the Act — the day the future act is done; or
  - (b) for a future act mentioned in subparagraph 24JAA (1) (c) (ii) of the Act — the day the future act is commenced.
- (3) However, if the action body and native title party agree that the report may be given to the Minister by a date after the date required by subsection (2), the action body must give the report to the Minister by the agreed date.

### **14                      Report — notification and comments**

- (1) This section applies if the action body gives a notice under paragraph 24JAA (10) (a) of the Act in relation to the future act to a person.
- (2) The report must state:
  - (a) how the notice was given to the person; and
  - (b) whether any comments were received by the action body from the person.

*Note* Section 20 requires the report to detail any concerns raised in the comments and how they are being dealt with by the action body.

- (3) A copy of the notice must be attached to the report.

**15 Report — requests to be consulted**

- (1) The report must state:
  - (a) the name of any registered native title claimant or registered native title body corporate who made a request to the action body under subsection 24JAA (13) of the Act to be consulted; and
  - (b) the date the request was made.
- (2) If the request was made within the time mentioned in paragraph 24JAA (11) (b) by a native title party, the report must:
  - (a) state the date the action body commenced consultation under section 6; and
  - (b) describe what was stated in the action body's response; and
  - (c) attach a copy of the action body's response.
- (3) Paragraph (1) (a) applies whether or not the request was made within the time mentioned in paragraph 24JAA (11) (b) of the Act.

**16 Report — requests for information**

- (1) If the native title party asked the action body for further information under section 7, the report must state:
  - (a) when the native title party made the request; and
  - (b) what information was requested; and
  - (c) if the action body gave the information to the native title party — when it was given to the native title party; and
  - (d) if the action body did not give the information to the native title party — how the matters in subsection 7 (2) were taken into account by the action body.

**17 Report — consultation arrangements**

- (1) The report must state how consultation arrangements were made, including:
  - (a) any request about consultations made by the native title party; and
  - (b) if a request was made, how the action body responded to the request.
- (2) The report must state how the consultation was conducted, including:
  - (a) the form of the consultation; and
  - (b) if a joint consultation was conducted — the names of the native title parties included in the joint consultation; and
  - (c) if a person other than the native title party and action body was included in the consultation, the name of the other person.

**18 Report on use of interpreters**

If the native title party asked the action body to arrange for an interpreter to attend the consultation meeting under subsection 9 (1), the report must state whether an interpreter attended the meeting.

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**Section 19**

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**19 Report — consultation meeting**

- (1) This section applies if a consultation meeting was held.
- (2) The report must state:
  - (a) the date notice of the meeting was given to each participant; and
  - (b) the date and place of the meeting; and
  - (c) the names of the participants and what organisations, if any, they represented.
- (3) The report must outline:
  - (a) any information given by the action body to the participants at the consultation meeting; and
  - (b) in chronological order:
    - (i) all correspondence between the participants at the consultation meeting; and
    - (ii) the consultation process that was followed.

**20 Report — concerns raised and action taken**

- (1) The report must give details of any relevant concern raised in comments given, in response to the notice given under subsection 24JAA (10) of the Act or during the consultation process, by:
  - (a) a person notified under paragraph 24JAA (10) (a) of the Act; or
  - (b) any other person included in the consultation.
- (2) The report must:
  - (a) outline all correspondence between the action body and other participants in the consultation; and
  - (b) state whether the concern will result in any change to the future act; and
  - (c) if the concern will result in a change to the future act — describe how the future act will change as a result of the concern; and
  - (d) if the concern will not result in any change to the future act — give reasons why it will not result in any change.
- (3) In this section:

***relevant concern*** means a concern that is relevant to minimising the impact of the future act on registered native title rights and interests in relation to land or waters in the area, and, if relevant, any access to the land or waters or the way in which anything authorised by the act might be done.

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.