

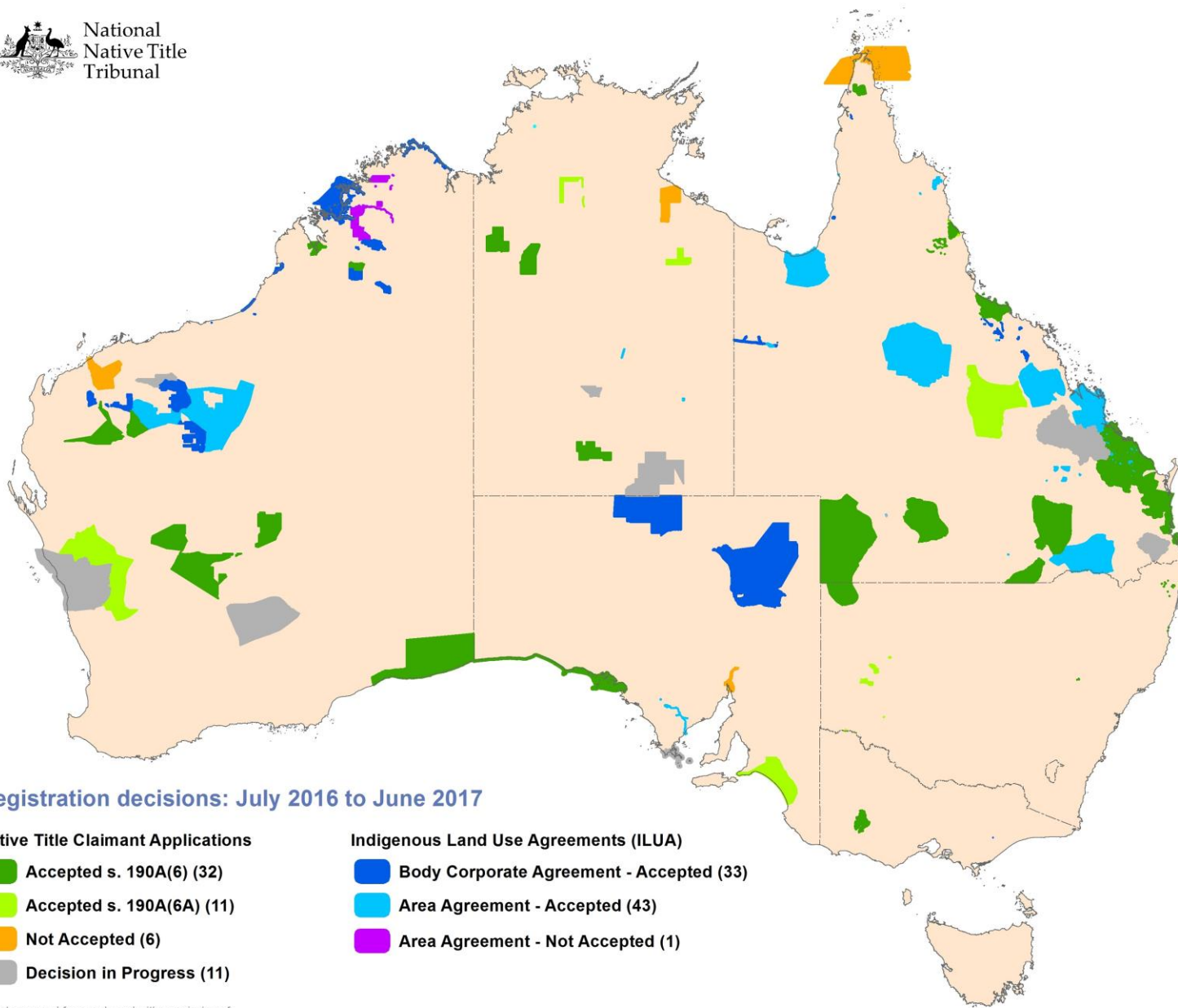


National
Native Title
Tribunal

Preparing Form 1 and ILUA applications (and supporting documents)

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6 June 2017

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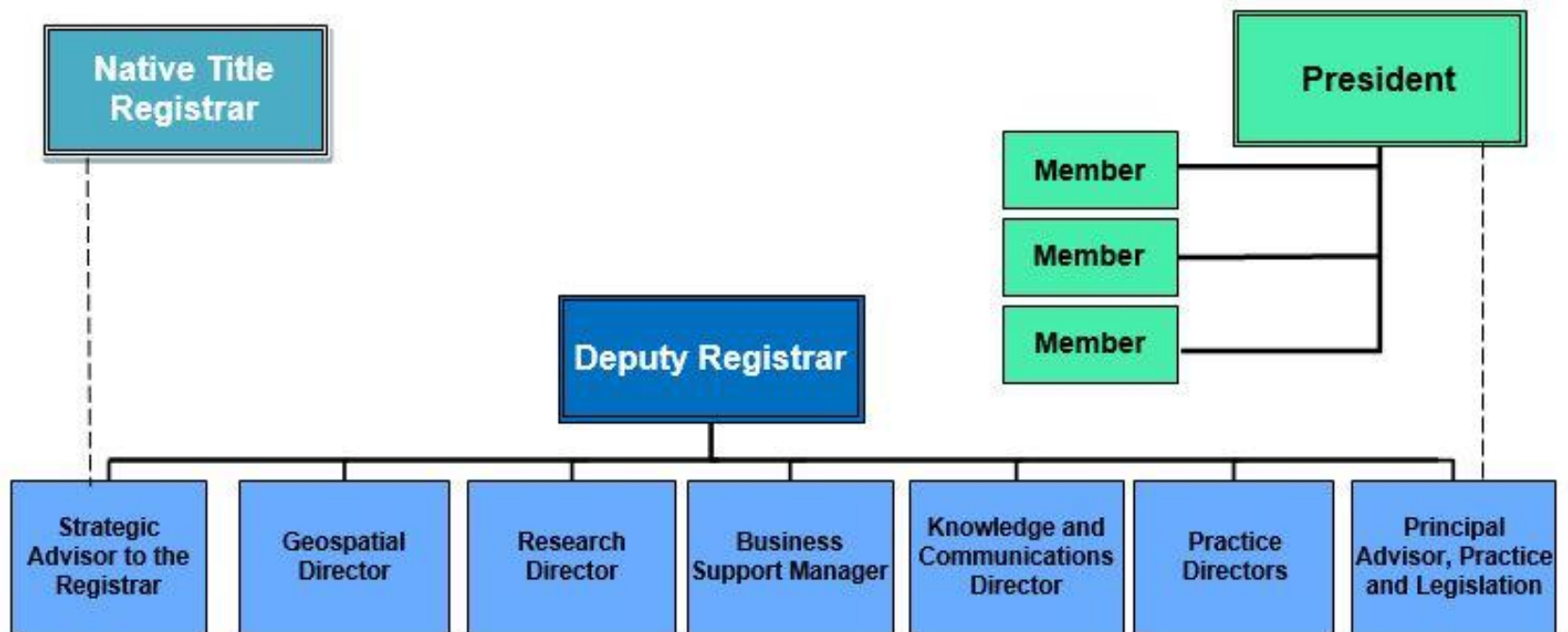
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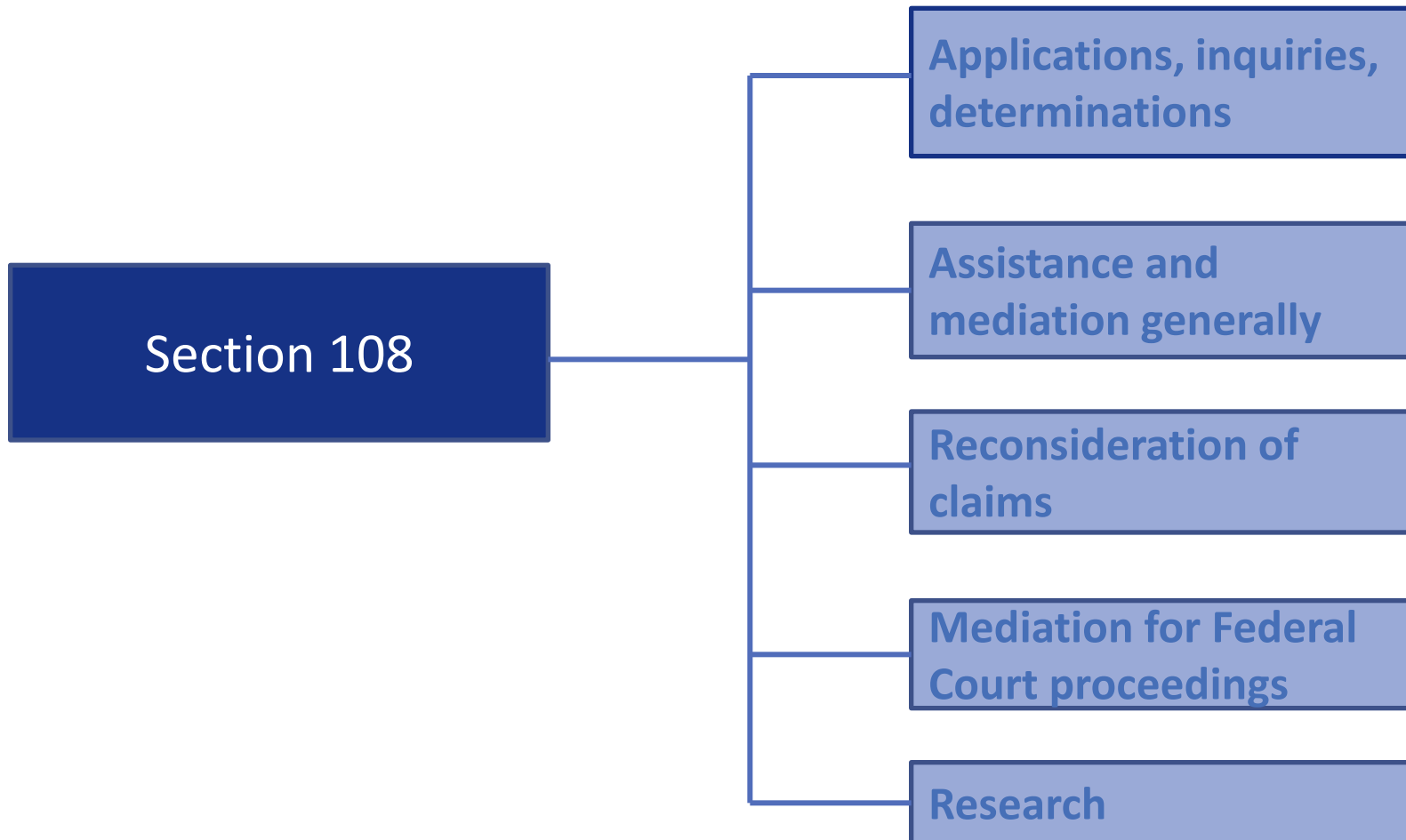
Overview of Presentation

- Role and functions of the Tribunal and the Native Title Registrar.
- Preparing claimant applications for registration:
 - Reasons for delays
 - Tribunal assistance
- Preparing ILUA applications for registration:
 - Reasons for delays
 - Tribunal and Registrar's assistance
- Where to find more information.

National Native Title Tribunal



The Tribunal's role: Statutory Functions



Native Title Registrar's role: Statutory Functions

Maintain Registers
s 98 & Parts 7, 8 & 8A

Indigenous Land Use Agreements
s 96A & Part 2



Preparing claimant applications for Registration

Background to the Registration Test

- *Native Title Amendment Act 1998* (Cth) introduced a more rigorous test before a claim is entered on the Register:
 - ensures only those claims with merit are registered
 - secures procedural rights for the native title claim group
 - the applicant is the registered native title claimant in future act negotiations.
- Federal Court may dismiss an application that fails the registration test – s 190F(6).

Overview of the Registration Test conditions

- S 190A(6): application must meet all of the conditions in 190B and 190C.
- Information that must be in the application
 - s 190C(2) and ss 61 and 62.
- Conditions about the merits of the claim s 190B.

Overview of the Registration Test conditions

Procedural Conditions s 190C

- s 190C(2) – Information required in application
- s 190C(3) – No common overlapping claims
- s 190C(4) – Authorisation

Merit Conditions s 190B

- s 190B(2) – Certainty around area
- s 190B(3) – Certainty around claim group
- s 190B(4) – Certainty around native title rights
- s 190B(5) – Sufficient factual basis for claim
- s 190B(6) – Prima facie case
- s 190B(7) – Traditional connection
- s 190B(8) – Prohibited areas
- s 190B(9) – Prohibited native title rights

Reasons for delays in Registration testing

- Common problems:
 - application does not contain required information
 - insufficient material
 - excessive material
 - factual basis material is not targeted to Registration test conditions.

Crucial material

- Compliant map and description.
- Affidavits sworn by the applicant – s 62(1)(a).
 - i. that the applicant believes that the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application; and
 - ii. that the applicant believes that none of the area covered by the application is also covered by an approved determination of native title; and
 - iii. that the applicant believes that all of the statements made in the application are true; and
 - iv. that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it; and
 - v. setting out details of the process of decision-making complied with in authorising the applicant to make the application and deal with matters arising in relation to it.

Crucial material – certifications by rep body

- Certification by every representative body that can certify.
- Must comply with s 203BE(4)
 - Must address s 203BE(4)(c) where there is an overlap.

Insufficient material

- Not the role of the Registrar's delegate to search out material in support of the claim.
- Requirements of the factual basis material
 - Assertions at s 190B(5):
 - association with the application area
 - traditional laws and customs
 - continuity in acknowledgement and observance of laws and customs.
 - Rights and interests claimed – s 190B(6)
 - Traditional physical connection – s 190B(7)

Excessive material

- What the Registrar's delegate must consider – s 190A(3).
- Registrar's delegate can accept statements in the application as true.
- Use of reference documents.
- Use of affidavits sworn by claim group members.
- Use of maps.

Reference document example – S 190B

S190B NTA: Conditions about merits of the claim

In addressing the various subsections of s 190B, and without limiting the Registrar's consideration of other materials considered relevant, we refer the Registrar to the following evidence:

Section	Requirement	Evidence satisfying requirement
190B(2)	That the information and map contained in the application as required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters	<ul style="list-style-type: none"> Form 1, Attachments B and C
190B(3)(b)	That the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group	<ul style="list-style-type: none"> Form 1, Schedule A
190B(4)	That the description contained in the application as required by paragraph 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified	<ul style="list-style-type: none"> Form 1, Schedules E and F
190B(5)(a)	That the native title claim group have, and the predecessors of those persons had, an association with the area	<ul style="list-style-type: none"> Statement of [NAME], [12]-[22] Annexure 1 Annexure 2 Annexure 3
190B(5)(b)	That there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group giving rise to rights and interests	<ul style="list-style-type: none"> Statement of [NAME], [23]-[33]
190B(5)(c)	That the native title claim group have continued to hold the native title in accordance with those traditional laws and customs	<ul style="list-style-type: none"> Statement of [NAME], [17]-[22], [31], [34]-[51]
190B(6)	That, prima facie, at least some of the native title rights and interests claimed in the application can be established	<ul style="list-style-type: none"> Form 1, Schedules E - F Statement of [NAME], [23]-[51]
190B(7)(a)	That at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application	<ul style="list-style-type: none"> Statement of [NAME], [17], [22], [31], [34]-[51] Annexure 1 Annexure 3

Tribunal assistance – claimant applications

- Mapping assistance.
- Tenure information.
- Preliminary comments.



Preparing ILUA applications for registration

Summary of relevant ILUA provisions

What	BC Agreement	A Agreement	AP Agreement
Mandatory requirements	s 24BA-BE	s 24CA-CE	s 24DA-DF
Tribunal assistance	s 24BF	s 24CF	s 24DG
Making application/ Registrar's assistance	s 24BG	s 24CG	s 24DH
Registrar's notice	s 24BH 1 month (personal)	s 24CH 3 months (public/personal)	s 24DI 3 months (public/personal)
Registration Decision	s 24BI	s 24CI-CL	s 24DJ-DM
Register of IUAs	s 199A, 199B, 199D, 199E		
Removal	s 199C		

Reasons for delays in registration of ILUAs

- Map and description issues.
- Missing documents:
 - copies of Register extracts
 - Determinations
 - Reg 9 certificate.
- Certification:
 - Applications certified by only one representative body, where there is more than one representative body for the area.
- Authorisation:
 - Statements do not accurately address s 24CG(3)(b).

Tribunal and Registrar's assistance - ILUAs

- Tribunal assistance to negotiate an agreement.
- Registrar's assistance to prepare an application and accompanying documents – ss 24BG(3), 24CG(4) and 24DH(3).

Services include providing:

- feedback on draft agreements and applications for registration
 - geospatial information and mapping products
 - land tenure information and conducting searches.
- Pre-lodgement assistance can prevent delays in processing and notifying the application for registration.

Where to find more information

- Native Title Claimant Applications:
A Guide to understanding the requirements of the Registration Test
- ILUA Fact Sheets - www.nntt.gov.au

CONTACTS

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Questions