

National Native Title Tribunal Regulations (Amendment) 1996 No. 186

EXPLANATORY STATEMENT

STATUTORY RULES 1996 No. 186

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

NATIVE TITLE ACT 1993

NATIONAL NATIVE TITLE TRIBUNAL REGULATIONS (AMENDMENT)

Subsection 215(1) of the *Native Title Act 1993* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act or necessary or convenient to be prescribed for giving effect to the Act. Subsection 215(2) of the Act provides that regulations may make provision prescribing fees to be paid in relation to applications to the Registrar.

The purpose of these Regulations is to provide for an increase in the fees for lodgment of applications in the National Native Title Tribunal. The overall level of cost recovery in all Commonwealth courts and tribunals is being increased to bring it into line with the average level of cost recovery in the State and Territory courts and is part of the overall Government strategy to reduce the Budget deficit.

The existing exemption provisions, which cover those in receipt of legal aid or income support payments, will remain to protect the disadvantaged.

Section 61 of the Act provides for native title and compensation applications to be made to the Native Title Registrar. Subsection 62(2) provides that any application under section 61 must be accompanied by any prescribed fee. Section 75 of the Act provides for "right to negotiate" applications to be made to the Registrar. Section 76 provides that any application made under section 75 must be accompanied by any prescribed fee.

Regulation 7 of the National Native Title Regulations provides for fees for lodgment of applications. It provides that for the purposes of subsection 62(2) and section 76 of the Act a fee of \$368 is prescribed.

Details of the Regulations are as follows:

Regulation 1 - Commencement

Regulation 1 provides for these Regulations to commence on 1 September 1996.

Regulation 2 - Amendment

Regulation 2 provides for the National Native Title Tribunal Regulations to be amended as set out in these Regulations.

Regulation 3 - Regulation 7 (Lodgment of applications - fees)

Regulation 3 omits \$368 and substitutes \$500.

Regulation 4 - Regulation 8 (When fees are not payable)

Existing regulation 8 provides for the circumstances in which an application fee is not payable. Subregulation 4.1 omits existing regulation 8 and substitutes new regulation 8.

New regulation 8 provides that the fee is not payable if the person liable to pay it has been granted legal aid (paragraph (a)) or is an inmate of a prison (subparagraph (b)(iii)). These exemptions existed under the previous Regulations.

New paragraph 8(b) also provides that the fee is not payable if the applicant is:

- * the holder of one of a number of current cards issued by the Department of Social Security (subparagraph (b)(i)); or
- * the holder of any other card issued by the Department of Social Security or the Department of Veteran's Affairs that certifies entitlement to Commonwealth health concessions (subparagraph (b)(ii)).

The Regulations up-date the list of cards issued by the Department of Social Security which were included in the previous Regulations. In order to avoid having to amend the Regulations each time the Department of Social Security changes the cards it issues, a catch-all provision has also been included.

The Regulations also provide that the fee is not payable if the person liable to pay it is under 18 years of age (subparagraph 8(b)(iv)), is in receipt of AUSTUDY (subparagraph 8(b)(v)) or is in receipt of benefits under the ABSTUDY Scheme (subparagraph 8(b)(vi)). These provisions are consistent with those in other Commonwealth courts and tribunals.

Regulation 4 - New regulations 16 and 17

Regulation 4 inserts new regulations 16 and 17.

New regulation 16 provides that a fee, prescribed by regulation 7 or 15, is increased biennially, on the anniversary of 1 July 1996.

New regulation 17 provides for the method by which the increase is to be calculated. New subregulation 17(1) defines a number of the terms necessary to calculate the increase, including CPI number which is defined as being the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

New subregulation 17(2) provides for the formula for calculating the fee increases. As examples of how the increases are to be calculated: at the end of the 2 year period commencing 1 July 1996, the each of the existing fees will be multiplied by the CPI number for the March quarter 1998 and divided by the CPI number for the March quarter 1996. The fees will only be increased if the CPI number for the March quarter 1998 is greater than that for the March quarter 1996. Similarly, at the end of the 2 year period commencing 1 July 1998, each of the existing fees will be multiplied by the CH number for the March quarter 2000 and divided by the CPI number for the March quarter 1998. Again, the fees will only be increased if the CPI number for the March quarter 2000 is greater than that for the March quarter 1998.

New subregulation 17(3) provides for the rounding of the increased fees to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.

New subregulation 17(4) provides that if the Australian Statistician publishes a replacement CPI number in respect of an already published CPI number for a March quarter, the replacement CPI number is to be disregarded. The effect of this subregulation is that once the fees have been increased biennially, in accordance with officially published CPI numbers, any alteration in the CPI numbers won't necessitate an alteration in the increased fees during the biennium.

New subregulation 17(5) provides that if the Australian Statistician changes the reference base for the CPI then the new reference base will be adopted for the purposes of these Regulations.

The Regulations commence on 1 September 1996.