

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 49**

Issued by the authority of the Attorney-General

*Native Title Act 1993*

*Native Title (Indigenous Land Use Agreements) Amendment  
Regulations 2006 (No. 1)*

Subsection 215(1) of the *Native Title Act 1993* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

These Regulations amend the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (the Principal Regulations) to provide a prescribed form for objecting to an alternative procedure agreement under subsection 24DJ(1) of the Act. No form has previously been prescribed.

Alternative procedure agreements are a type of indigenous land use agreement (ILUA). ILUAs are voluntary agreements, provided for by the Act, which are made with native title parties regarding the use and management of an area.

The Regulations also insert definitions of the three different types of ILUAs that are presently dealt with in the Principal Regulations. The definitions refer to relevant provisions of the Act which outline the requirements for each type of ILUA. This amendment does not change the effect of the Principal Regulations but is intended to remove any doubt about the meaning of the terms to be defined.

Once an ILUA is completed, the parties to it may apply to the Registrar of the National Native Title Tribunal (NNTT) (the Registrar) to have it registered on the Register of Indigenous Land Use Agreements. Registration of an ILUA has certain statutory benefits:

- if the ILUA so provides, future acts affecting native title are valid; and
- the ILUA will bind all native title holders in relation to land and waters in the agreement area, even if they are not a party to the ILUA.

As a registered ILUA binds all native title holders in the agreement area (even those who are not a party to the ILUA), the Act allows persons claiming to hold native title in the area to object to the registration of certain types of ILUAs. Objections to an alternative procedure agreement may be made under subsection 24DJ(1).

Section 77A of the Act provides that an application under subsection 24DJ(1) objecting against registration of an alternative procedure agreement must, amongst other matters, be in the prescribed form and be accompanied by any prescribed documents and any prescribed fee.

After the end of the notice period for objections, the Registrar must decide whether or not to register the agreement. The Registrar must register an alternative procedure agreement if:

- no objection is made against registration within the notice period; or
- one or more objections have been made during the notice period but all of them have been withdrawn; or
- one or more objections have been made during the notice period and all of them have not been withdrawn, but none of the persons making the objections has satisfied the NNTT or a recognised State/Territory body that it would not be fair and reasonable to register the agreement.

Although the ability to apply for registration of an alternative procedure agreement has been available since 30 September 1998, when the relevant provisions were inserted into the Act, the NNTT has advised that, as of 17 January 2005, it has not received any applications. However, the Regulations are required to enable objections to be made in accordance with the Act in the event that an alternative procedure agreement is lodged for registration.

It was considered inappropriate for the Regulations to prescribe any fee for objecting to an alternative procedure agreement. A prescribed fee may be difficult and costly to administer and fees are not imposed for objecting to other types of ILUAs.

It was also considered inappropriate for the Regulations to require any documents to accompany the form for objecting to an alternative procedure agreement. The form requires objectors to provide essential information, which would form a basis for consideration of or negotiation concerning the objection. While further information may subsequently be requested from an objector, requiring additional information when the objection is made may impose greater compliance costs on an objector.

The NNTT has been consulted about the Regulations.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence the day after they are registered in the Federal Register of Legislative Instruments.