



Native Title (Assistance from Attorney-General) Amendment Guideline 2013

I, George Brandis QC, Attorney-General, make the following guideline under the *Native Title Act 1993*.

Dated: 9 December 2013

George Brandis QC
Attorney-General

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1 Name of guideline

This guideline is the *Native Title (Assistance from Attorney-General) Amendment Guideline 2013*.

2 Commencement

This guideline commences on 1 January 2014.

3 Authority

This guideline is made under the *Native Title Act 1993*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Native Title (Assistance from Attorney-General) Guideline 2012

1 Section 2.4

Repeal the section.

2 Paragraphs 4.1(2)(f), (g) and (h)

Repeal the paragraphs, substitute:

- (f) the availability of funds, in any given year, under the appropriation for assistance from the Attorney-General;
- (g) the number and relative merits of other applications for grants made under the appropriation for assistance from the Attorney-General;
- (h) the number and relative merits of grants likely to be made under the appropriation for assistance from the Attorney-General;

3 Subsection 4.1(5)

Repeal the subsection, substitute:

- (5) The decision maker may authorise the provision of assistance for disbursements or legal representation to an applicant who does not meet the requirements of this Part only if:
 - (a) the decision to authorise the provision of the assistance is reasonable; and
 - (b) there are exceptional circumstances.

4 Sections 4.6 and 4.7

Repeal the sections, substitute:

4.6 Matters to be considered—assistance for legal representation

General considerations

- (1) A decision maker may authorise the provision of assistance for legal representation to an applicant to whom subsection 213A(1) or (2) of the Act applies if the decision maker is satisfied that it is reasonable to do so after considering the following:
 - (a) the likely benefit to the applicant of participating in the inquiry, mediation, proceeding, agreement or dispute relative to the likely cost of assistance;
 - (b) whether the applicant's interest is protected or capable of being protected under the regime for future acts in the Act;
 - (c) whether the applicant's interest is appropriately protected having regard to the identity and interest of other parties to the inquiry, mediation, proceeding, agreement or dispute;
 - (d) whether the applicant's participation in the inquiry, mediation, proceeding, agreement or dispute will enhance the prospect of a mediated outcome;
 - (e) the nature of the applicant's interest and the nature of the native title rights being claimed;
 - (f) the number of claims that directly affect the applicant;
 - (g) the applicant considerations unless the applicant is a group;

- (h) the legal considerations;
- (i) any considerations mentioned in subsections (2), (3) and (4) that are relevant to the application.

Assistance for inquiries, mediation or proceedings—further considerations

- (2) If the applicant is seeking assistance for legal representation under subsection 213A(1) of the Act, the decision-maker must consider whether the applicant's interest is likely to be adversely affected in a real and significant way if the native title claim is recognised.

Assistance for agreements and disputes—further considerations

- (3) If the applicant is seeking assistance for legal representation under subsection 213A(2) of the Act, the decision-maker must consider whether there is a significant benefit to the applicant, or likely to be a significant benefit to others, of an agreement being negotiated or a dispute being resolved, having regard to the following:
 - (a) the extent of any adverse effect on the applicant's interest of a determination of native title;
 - (b) whether all parties necessarily involved in the matter in relation to which assistance is sought are willing and able to negotiate;
 - (c) the potential parties to the proposed agreement;
 - (d) whether a standard form of agreement, or template for an agreement, exists;
 - (e) the area of land or waters covered by the proposed agreement;
 - (f) the duration of the proposed agreement;
 - (g) the matters to be dealt with under the agreement.

Assistance for trials or preliminary or interlocutory proceedings

- (4) If the applicant is seeking assistance for legal representation in a trial or preliminary or interlocutory proceeding, the decision-maker must be satisfied that:
 - (a) the trial or proceeding raises a new and significant question of law relevant to the applicant's interest; or
 - (b) the court requires the applicant's participation; or
 - (c) both:
 - (i) the trial or proceeding is likely to adversely affect the applicant's interest in a real and significant way; and
 - (ii) mediation has failed for reasons beyond the applicant's control.

5 Subsection 4.15(3)

Omit "a particular proceeding will settle a new or novel question of law," substitute "to authorise the provision of assistance,".

6 Part 6

Repeal the Part, substitute:

Part 6—Transitional provisions

6.1 Transitional

An application for assistance under section 213A of the Act made on or before 1 January 2014, but not decided by that date, is to be decided in accordance with this guideline as in force on 1 January 2014.