

EXPLANATORY STATEMENT

Native Title (Assistance from Attorney-General) Amendment Guidelines 2016

The *Native Title (Assistance from Attorney-General) Amendment Guidelines 2016* amend the *Native Title (Assistance from Attorney-General) Guideline 2012* (Native Title Guidelines 2012) to incorporate a scheme of financial assistance for Native Title Officers.

Authority for making the legislative instrument

The Attorney-General has made the Amendment Guidelines under subsection 213A(5) of the *Native Title Act 1993*.

Commencement arrangements

The Amendment Guidelines commence the day after the instrument is registered. On the day of registration, the Amendment Guidelines and the *Native Title Guidelines 2012* will be compiled.

The Amendment Guidelines are a legislative instrument for the purpose of the *Legislation Act 2003* (the Legislation Act) and are subject to disallowance. The Legislation Act specifies no other conditions that need to be satisfied, before the power to make the proposed Amendment Guidelines may be exercised.

Purpose and operation of the instrument

These guidelines amend the Native Title Guidelines 2012, to incorporate provisions for funding Native Title Officers.

The Native Title Guidelines 2012 provide funding for Native Title Respondents for the costs of legal representation in Native Title proceedings under s213A of the *Native Title Act 1993*.

Funding for Native Title Officers was previously under a separate, non-legislative instrument (*the Native Title Officer Funding Scheme Guidelines 2015*).

As funding for Native Title Officers is also made under s213A of the *Native Title Act 1993*, the guidelines need to be legislative, and incorporated into the Native Title Guidelines 2012.

Apart from inclusion within the Native Title Guidelines 2012, no other changes have been made to financial assistance for Native Title Officers, or native title legal representation for respondents.

Native Title Officers are employed in organisations that assist respondents in native title claims.

Funding for Native Title Officers is administered through an open, competitive, merit-based selection process. Opening and closing dates for funding rounds are included in the Amendment Guidelines.

Native Title Officers work with individuals and organisations who are respondents to native title litigation, to assist them in resolving native title claims. Native Title Officers educate members of peak bodies or organisations about native title issues, facilitate grouping of respondents in claim areas and coordinate instructions to legal representatives.

Grants are a contribution by the Commonwealth towards the payment of expenses associated with employing a Native Title Officer.

The Amendment Guidelines provide the selection criteria used in assessing applications for financial assistance for Native Title Officers.

Details of the Amendment Guidelines are set out in the [Attachment](#).

Incorporation of documents by reference

There are no documents incorporated by reference.

Consultation

No specific consultation process was undertaken. The nature of the amendment is such that specific consultation was considered unnecessary. No changes were made to either the policy or practice of the Native Title Officer Funding Scheme.

The program has been in place since 2014 via non-legislative guidelines and no significant changes have been made. The program was made ongoing in a 2015 budget decision.

The department maintains on-going liaison with Native Title Officers.

Regulatory impact

The Office of Best Practice Regulation has considered the matter and formed the view that a regulatory impact statement is not required.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The legislative instrument amends the current *Native Title (Assistance from Attorney-General) Guideline 2012*, which authorises the provision of legal financial assistance by the Attorney-General to native title respondents under section 213A of the *Native Title Act 1993*.

The legislative instrument incorporates funding for Native Title Officers into the *Native Title (Assistance from Attorney-General) Guidelines 2012*. Native Title Officers work with individuals and organisations who are respondents to native title litigation, to assist them in resolving native title claims.

The legislative instrument provides guidance to the decision-maker is assessing applications for grants of assistance for Native Title Officers.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms. The legislative instrument relates to the provision of financial assistance to Native Title Officers who assist respondents to native title claims.

The Commonwealth continues to provide assistance for native title claimants through a separate scheme administered by the Department of the Prime Minister and Cabinet.

Conclusion

This legislative instrument is compatible with human rights, as it does not raise any human rights issues.

Senator the Hon George Brandis QC, Attorney-General

Attachment

Description of the provisions of the Amendment Guidelines

1 – Name of guideline

States the name of this legislative instrument.

2 – Commencement

States that the Amendment Guidelines will commence the day after registration.

States that Schedule 1, Part 2 will commence 1 March 2017.

3 – Authority

States that the amendment guidelines are made under the *Native Title Act 1993*.

4 – Schedules

States that the *Native Title Assistance from Attorney-General) Guideline 2012* is amended or repealed as specified in the schedule.

Schedule 1 – Amendments

Part 1 – Funding for the period from 1 January 2017 to 30 June 2017.

Item 1 - Sections 1.1 and 1.3

Repeals sections 1.1 and 1.3 of the current guidelines (name and purpose).

Inserts a new 1.1 to rename the guidelines the *Native Title (Assistance from Attorney-General) Guidelines 2012*.

Inserts a new 1.2 to amend the reference to 'guideline', with 'guidelines'.

Item 2 – Section 2.1

Amends reference to 'guideline' with 'guidelines'.

Item 3 – Section 2.1

Repeals the definition of 'applicant' and substitutes a new definition of applicant. The new definition of applicant includes a definition for the purpose of both legal representation and for the Native Title Office Funding Scheme.

Item 4 – Section 2.1

Inserts the definition of the Native Title Officer Funding Scheme.

Item 5 – Section 2.1

Repeals the note to 2.1 as the note is no longer relevant.

Item 6 – Subsection 2.2(1)

Amends reference to ‘guideline’ with ‘guidelines’.

Item 7 – Section 2.3

Amends reference to ‘guideline’ with ‘guidelines’.

Item 8 – Subsection 3.1(2)

This clarifies that subsection 3.1(2) relates to the provision of assistance for legal representation and/or disbursements under Part 4.

Item 9 – After paragraph 3.3(b)

Inserts the start and end date for which applications for assistance under the Native Title Officer Funding Scheme may be submitted. These are the dates the funding round open and close.

Item 10 – Part 4 (heading)

Repeals the heading and inserts ‘Applications for assistance relating to legal representation and disbursements’. This clarifies that Part 4 relates to assistance for legal representation and disbursements, not assistance for Native Title Officers.

Item 11 – Paragraphs 5.1(1)(a), (b) and (c)

This clarifies that paragraphs 5.1(1)(a) – (c) relate to the provision of assistance for legal representation and/or disbursements under Part 4. This does not relate to the provision of assistance for Native Title Officers.

Item 12 – After Part 5

This inserts a new part, Part 5A, that deals with applications for assistance under the Native Title Officer Funding Scheme.

Section 5A.1 sets out the eligibility criteria that the decision maker must have regard to, in making a decision on a complete application for assistance under the Native Title Officer Funding Scheme.

Section 5A.2 provides that the provision of assistance must not be authorised for costs incurred prior to the complete application being received, unless there are exceptional circumstances.

Section 5A.3 provides that the provision of assistance must not be authorised for certain costs.

Section 5A.4 provides that a decision must be given within 28 days following the receipt of a complete application. It also specifies that a notice of decision must contain reasons for the decision.

Section 5A.5 specifies that assistance must not be provided to an applicant, where the applicant is assisting a respondent that has an interest that is a previous exclusive possession act; or has extinguished native title according to law; or is a low impact future act; or is a Scheduled interest; or relates to connection or other anthropological issues; or relates to compensation.

Section 5A.6 provides that the decision maker may authorise assistance to fund a Native Title Officer to: educate peak industry bodies or organisations about native title issues; and facilitate grouping of respondents in claim areas; and coordinate instructions to legal representatives in order to facilitate the efficient and effective resolution of native title claims.

Item 13 – Part 6

Repeals the transitional provisions, as they are no longer relevant.

Part 2 – Funding for the 2017-18 financial year and future financial years.

Item 14 – Paragraph 3.3(ba)

Repeals paragraph 3.3(ba) and inserts the new start and end date for which applications for assistance under the Native Title Officer Funding Scheme may be submitted. These are the dates the funding round open and close.