



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

I, George Brandis QC, Attorney-General, make the following guidelines.

Dated 7 November 2016

George Brandis QC
Attorney-General

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1 Name

This instrument is the *Native Title (Assistance from Attorney-General) Amendment Guidelines 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	19 November 2016
2. Schedule 1, Part 1	The day after this instrument is registered.	19 November 2016
3. Schedule 1, Part 2	1 March 2017.	1 March 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 213A(5) of the *Native Title Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

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

Native Title (Assistance from Attorney-General) Guideline 2012

1 Sections 1.1 and 1.3

Repeal the sections, substitute:

1.1 Name

These guidelines are the *Native Title (Assistance from Attorney-General) Guidelines 2012*.

1.2 Purpose

These guidelines are to be applied in authorising the provision of assistance under section 213A of the Act.

Note: Section 213A of the Act allows certain persons to apply to the Attorney-General for legal or financial assistance in relation to certain inquiries, mediations, agreements, or disputes, or in relation to the development or review of certain standard form agreements. Subsection 213A(5) of the Act provides that the Attorney-General may make guidelines that are to be applied in authorising the provision of the assistance.

2 Section 2.1

Omit “this guideline”, substitute “these guidelines”.

3 Section 2.1 (definition of *applicant*)

Repeal the definition, substitute:

applicant:

- (a) in relation to an application for assistance relating to legal representation or disbursements—means an entity or group that applies for assistance, or on whose behalf an application for assistance is made, under section 213A of the Act; and
- (b) in relation to an application for assistance under the Native Title Officer Funding Scheme—means a peak body or other organisation that employs, or is seeking to employ, a person as a native title officer to assist respondents to resolve native title claims.

4 Section 2.1

Insert:

Native Title Officer Funding Scheme means the scheme under which an amount is available, up to a maximum amount each financial year, to fund a peak industry body or organisation to employ persons, known as native title officers, to:

- (a) educate peak industry bodies or organisations about native title issues; and
 - (b) facilitate grouping of respondents in claim areas; and
 - (c) coordinate instructions to legal representatives in legal action;
- so as to facilitate efficient and effective resolution of native title claims.

5 Section 2.1 (note to the definition of *liabilities*)

Repeal the note.

6 Subsection 2.2(1)

Omit “this guideline”, substitute “these guidelines”.

7 Section 2.3

Omit “this guideline”, substitute “these guidelines”.

8 Subsection 3.1(2)

After “provision of assistance”, insert “under Part 4”.

9 After paragraph 3.3(b)

Insert:

- (ba) if the application is for assistance under the Native Title Officer Funding Scheme—submitted during the period:
 - (i) beginning on 21 November 2016; and
 - (ii) ending on 2 December 2016; and

10 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Applications for assistance relating to legal representation and disbursements

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

After “assistance”, insert “under Part 4”.

12 After Part 5

Insert:

Part 5A—Applications for assistance under the Native Title Officer Funding Scheme

Division 1—General requirements

5A.1 Making a decision on an application

- (1) A decision maker must decide whether or not to authorise the provision of assistance in relation to a complete application.
- (2) In deciding whether to authorise the provision of assistance, the decision maker must have regard to the following matters:
 - (a) in relation to respondents for whose benefit assistance is sought by the applicant, the nature of the respondents’ interests and rights, having regard to considerations such as:
 - (i) the sector that the applicant represents; and

- (ii) the likely benefit to such respondents in participating in a relevant native title proceeding; and
 - (iii) the native title issues that such respondents are likely to face in the relevant native title proceeding; and
 - (iv) whether the interests of such respondents are likely to be adversely affected in a real and significant way if a native title claim is recognised, or whether those interests are capable of being protected under the Act by another party to the relevant native title proceeding, relative to other applications for assistance;
- (b) if the applicant has received assistance under the Native Title Officer Funding Scheme or other governmental monetary assistance—its record of compliance with any terms and conditions on which that assistance was provided;
 - (c) the applicant’s ability to match the assistance provided by the Commonwealth;
 - (d) whether authorising the provision of assistance represents value for money and is reasonable in all the circumstances;
 - (e) the availability of funds for the year in which the assistance is to be provided.
- (3) The decision maker must give equal weight to each matter.

5A.2 No assistance for retrospective costs

A decision maker must not authorise the provision of assistance for costs incurred before the date on which the Department receives a complete application, except in exceptional circumstances.

5A.3 No assistance for administrative costs etc.

A decision maker must not authorise the provision of assistance for:

- (a) if a person is, or is to be, a native title officer and will carry out other duties—costs incurred in respect of those other duties; or
- (b) administrative expenses, including ongoing costs of the applicant peak body or other organisation; or
- (c) costs incurred in dealing with the Department in relation to an application for assistance; or
- (d) costs incurred in relation to activities which are already funded, or significantly funded, by the Commonwealth.

5A.4 Notice of decision

- (1) The decision maker must give the applicant, or the entity that applied on behalf of the applicant, written notice of the decision maker’s decision.
- (2) The notice must:
 - (a) give reasons for the decision maker’s decision; and
 - (b) be given not later than 28 days after the last day on which submissions may be submitted, as mentioned in paragraph 3.3(ba).

Division 2—Interests of respondents

5A.5 Interests for which assistance is not to be granted

A decision maker must not grant assistance under section 213A of the Act to an applicant in respect of a respondent for whose benefit assistance is sought if the respondent's interest in a native title proceeding:

- (a) is, or may be, a previous exclusive possession act; or
- (b) has, or may have, extinguished native title according to law; or
- (c) is, or may be, a low impact future act; or
- (d) is, or may be, a Scheduled interest; or
- (e) relates, or may relate, to connection or other anthropological issues; or
- (f) relates, or may relate, to compensation.

Division 3—Native Title Officer Funding Scheme

5A.6 Matters to be considered

A decision maker may authorise the provision of assistance under section 213A of the Act if the decision maker is satisfied that the assistance will fund the position of a person, known as a native title officer, to:

- (a) educate peak industry bodies or organisations about native title issues; and
 - (b) facilitate grouping of respondents in claim areas; and
 - (c) coordinate instructions to legal representatives in legal action;
- so as to facilitate efficient and effective resolution of native title claims.

13 Part 6

Repeal the Part.

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

Native Title (Assistance from Attorney-General) Guidelines 2012

14 Paragraph 3.3(ba)

Repeal the paragraph, substitute:

- (ba) if the application is for assistance under the Native Title Officer Funding Scheme—submitted between 1 April and 30 April in the financial year before the financial year to which the assistance relates; and