



Native Title (Provision of Financial Assistance) Guidelines 2006

as amended

made under subsection 183 (4) of the

Native Title Act 1993

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taking into account amendments up to *Native Title (Provision of Financial Assistance)
Amendment Guidelines 2011 (No. 1)*

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Part 1 Introduction

- 1 Subsection 183 (3) of the *Native Title Act 1993* allows the Attorney-General to authorise the provision of legal or financial assistance by the Commonwealth to an applicant in certain circumstances.
- 2 The provision of assistance may be authorised unconditionally or subject to such conditions as the Attorney-General determines. The extent of the provision of assistance authorised is also a matter for the Attorney-General's determination.
- 3 The Attorney-General has delegated the Attorney-General's powers under subsection 183 (3) of the *Native Title Act 1993* to certain officers in the Attorney-General's Department.
- 4 The Attorney-General may determine guidelines that are to be applied in authorising the provision of assistance under section 183 of the *Native Title Act 1993*.
- 5 The Attorney-General is prohibited, by subsection 183 (6) of the *Native Title Act 1993*, from authorising the provision of assistance under section 183 of the Act to a person in relation to:
 - (a) any claim by the person, in an inquiry, mediation or proceeding, to hold native title or to be entitled to compensation in relation to native title; or
 - (b) an indigenous land use agreement, if the person holds or claims to hold native title in relation to the area covered by the agreement; or
 - (c) an agreement or dispute about rights conferred under subsection 44B (1) of the Act, if the person is included in the native title claim group concerned.

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Part 2 Commencement

- 6 These Guidelines commence on 1 January 2007.
- 7 Part 11 sets out provisions for dealing with the following:
- (a) provision of assistance authorised before the commencement of these Guidelines;
 - (b) applications that were received, but not determined, before the commencement of these Guidelines.

Part 3 Interpretation

8 In these Guidelines:

Act means the *Native Title Act 1993*.

applicant means:

- (a) a person who makes an application, including a group representative; or
- (b) a person whose application has been granted under section 183 of the Act.

application means an application for the provision of assistance made under subsection 183 (1) or (2) of the Act, including an application for an extension of assistance made in accordance with section 39.

assistance means legal or financial assistance of a kind that may be authorised by the Attorney-General under section 183 of the Act.

claimant means a person who:

- (a) claims to hold native title; or
- (b) is authorised by a native title claim group to seek a determination of native title; or
- (c) claims to be entitled to compensation in relation to native title.

Department means the Attorney-General's Department.

group representative means a society, organisation, association or other body who acts as an agent for a person who:

- (a) is, or intends to apply to be, a party to an inquiry, mediation or proceeding related to native title; or
- (b) is or intends to become a party to the negotiation of an ILUA or an agreement about rights conferred under subsection 44B (1) of the Act; or
- (c) is or intends to become a party to an inquiry, mediation or proceeding in relation to an ILUA or an agreement about rights conferred under subsection 44B (1) of the Act; or
- (d) is in a dispute with a person about rights conferred under subsection 44B (1) of the Act.

ILUA means an indigenous land use agreement as defined in section 253 of the Act.

legal practitioner means a person entitled, under an Act or a law of a State or Territory, to practise as one of the following:

- (a) a legal practitioner;
- (b) a barrister;
- (c) a solicitor;
- (d) a barrister and solicitor.

native title officer means a person who is engaged by a group representative for the purpose of undertaking work on native title matters for which assistance has been authorised under these Guidelines.

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non-claimant applicant means a person, other than a claimant, who applies to the Federal Court of Australia for a native title determination.

person means an individual, a body politic, an incorporated body or an unincorporated body.

- 9 Unless the contrary intention appears, a term used in these Guidelines has the same meaning as in the Act.
- 10 References to dollar amounts are inclusive of GST payable under the *A New Tax System (Goods & Services Tax) Act 1999*.

Part 4 Scope of section 183 of the Act

Division 4.1 General

- 11 The activities for which an application for the provision of assistance may be made are the subject of subsections 183 (1) and (2) of the Act.

Division 4.2 What assistance can be applied for under subsection 183 (1) of the Act

- 12 Subsection 183 (1) of the Act provides that a person who is a party, or who intends to apply to be a party, to an inquiry, mediation or proceeding related to native title may apply to the Attorney-General for the provision of assistance in relation to the inquiry, mediation or proceeding.
- 13 An application for the provision of assistance may only be made under subsection 183 (1) of the Act for an inquiry, mediation or proceeding under a provision of the Act, such as the following:
- (a) an inquiry, mediation or proceeding in relation to a native title determination (claimant or non-claimant applicant);
 - (b) mediation under Division 1B of Part 4 in relation to native title;
 - (c) special inquiries under section 137 or inquiries under section 139;
 - (d) mediation by the arbitral body (under subsection 31 (3)) to assist in obtaining an agreement under the right to negotiate process;
 - (e) a proceeding before the arbitral body under section 35 for a determination.

Division 4.3 What assistance can be applied for under subsection 183 (2) of the Act

- 14 Subsection 183 (2) of the Act provides that a person who is a party, or who intends to become a party, to an ILUA or an agreement about rights conferred under subsection 44B (1) of the Act, or a person who is in dispute with any other person about rights conferred under subsection 44B (1) of the Act, may apply to the Attorney-General for the provision of assistance in relation to:
- (a) negotiation of an ILUA or an agreement about rights conferred under subsection 44B (1) of the Act; or
 - (b) an inquiry, mediation or proceeding in relation to such an agreement; or
 - (c) resolution of a dispute about rights conferred under subsection 44B (1) of the Act.

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Division 4.4 Matters of which the Attorney-General must be satisfied before assistance can be authorised under the Act

- 15 The provision of assistance may be authorised under section 183 of the Act in respect of applications for the purposes set out in subsections 183 (1) and (2) of the Act only if the Attorney-General is satisfied that:
- (a) the applicant is not eligible to receive assistance in relation to the matter from any other source (including from a representative Aboriginal/Torres Strait Islander body); and
 - (b) the provision of assistance to the applicant is in accordance with these Guidelines; and
 - (c) in all the circumstances, it is reasonable that the application be granted.

Part 5 Eligibility for Assistance

Division 5.1 General

- 16 A person is eligible for the provision of assistance under section 183 of the Act if:
- (a) the person:
 - (i) is a party, or intends to apply to be a party, to an inquiry, mediation or proceeding related to native title; or
 - (ii) is or intends to become a party to an ILUA or to an agreement about rights conferred under subsection 44B (1) of the Act and is seeking the provision of assistance in relation to the negotiation of such an agreement; or
 - (iii) is or intends to become a party to an ILUA or to an agreement about rights conferred under subsection 44B (1) of the Act and is seeking the provision of assistance in relation to an inquiry, mediation or proceeding in relation to the agreement; or
 - (iv) is in a dispute with another person about rights conferred under subsection 44B (1) of the Act and is seeking the provision of assistance in relation to resolving the dispute; and
 - (b) for an application for the provision of assistance in relation to an inquiry, mediation or proceeding related to native title — the person does not claim to hold native title or to be entitled to compensation in relation to native title; and
 - (c) for an application for the provision of assistance in relation to an ILUA — the person does not hold or claim to hold native title in relation to the area covered by the ILUA; and
 - (d) for an application for the provision of assistance in relation to an agreement or dispute about rights conferred under subsection 44B (1) of the Act — the person is not included in the native title claim group concerned.

Division 5.2 How reasonableness is determined for an application for assistance for an inquiry, mediation or proceeding under subsection 183 (1) of the Act

- 17 Subject to sections 18 and 19, in deciding whether it is reasonable to authorise the provision of assistance applied for under subsection 183 (1) of the Act, consideration must be given to the following matters:
- (a) if the applicant is not represented by a group representative — whether the applicant has sufficient financial resources;
 - (b) the nature of the applicant's interest in the inquiry, mediation or proceeding and the nature of the native title rights being claimed;

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- (c) if the applicant's interest does not extinguish native title as a matter of law — whether the applicant's interest is likely to be adversely affected in a real and significant way if the native title claim were to be recognised;
 - (d) whether the applicant's interest is protected or capable of being protected under the regime for future acts in the Act;
 - (e) the number of claims that directly affect the applicant;
 - (f) the likely benefit to the applicant of participating in the inquiry, mediation or proceeding relative to the likely cost of assistance;
 - (g) whether a group representative is acting as an agent of a party in the inquiry, mediation or proceeding;
 - (h) whether the applicant's interest is appropriately protected having regard to the identity and interests of other parties to the inquiry, mediation or proceeding;
 - (i) if assistance is sought for legal services to participate in a trial or preliminary or interlocutory proceeding, whether:
 - (i) the applicant's case has reasonable prospects of success; or
 - (ii) the applicant's participation will enhance the prospect of a mediated outcome.
- 18 The provision of assistance is not considered to be reasonable if the applicant's interest:
- (a) is a previous exclusive possession act; or
 - (b) has extinguished native title according to law; or
 - (c) is a low impact future act; or
 - (d) is a Scheduled interest.
- 19 The provision of assistance for legal services to participate in a trial or preliminary or interlocutory proceedings is not considered to be reasonable unless the applicant can demonstrate that at least 1 of the following conditions is satisfied:
- (a) the proceedings raise a new and significant question of law directly relevant to the applicant's interest;
 - (b) the court requires the applicant's participation in the proceedings;
 - (c) the proceedings will affect the applicant's interest in a real and significant way and mediation has failed for reasons beyond the applicant's control.

Division 5.3 **How reasonableness is determined for an application for assistance under subsection 183 (2) of the Act**

- 20 Subject to section 21, in deciding whether it is reasonable to authorise the provision of assistance applied for under subsection 183 (2) of the Act, consideration must be given to the following matters:
- (a) if the applicant is not represented by a group representative — whether the applicant has sufficient financial resources;

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- (b) the nature of the applicant's interest and the nature of the native title rights being claimed;
 - (c) whether the applicant's interest is protected or capable of being protected under the regime for future acts in the Act;
 - (d) whether the applicant's interest is appropriately protected having regard to the identity and interests of another party to the negotiations, to the inquiry, mediation or proceeding in relation to such an agreement or to a dispute about rights conferred under subsection 44B (1) of the Act;
 - (e) whether a group representative is acting as an agent of any party in the negotiation, inquiry, mediation or proceeding, or in the resolution of a dispute about rights conferred under subsection 44B (1) of the Act;
 - (f) whether there is a significant benefit to the applicant, or likely to be a significant benefit to others, of an agreement being negotiated having regard to:
 - (i) the extent of any adverse effect of a determination of the existence of native title on the applicant's interest; and
 - (ii) the likelihood of success of a native title claim; and
 - (iii) the area of the proposed agreement; and
 - (iv) the potential parties to the proposed agreement; and
 - (v) the duration of the proposed agreement; and
 - (vi) the matters to be dealt with under the agreement; and
 - (vii) any indications by native title claimants or other parties to the intended agreement of an intention or willingness to negotiate an agreement;
 - (g) the likely cost of the negotiation of an agreement, the inquiry, mediation or proceeding in relation to an existing agreement or the resolution of a dispute about rights conferred under subsection 44B (1) of the Act.
- 21 The provision of assistance is not considered to be reasonable if the applicant's interest:
- (a) is a previous exclusive possession act; or
 - (b) has extinguished native title according to law; or
 - (c) is a low impact future act; or
 - (d) is a Scheduled interest.

Division 5.4 Assessment of financial circumstances and of contribution

- 22 For paragraphs 17 (a) and 20 (a), whether an applicant has sufficient financial resources will be assessed by having regard to the likely cost of the assistance sought and to the income and assets of the applicant.

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- 23 If the applicant is not a natural person or the applicant is a trustee, consideration must be given to what other financial resources may be available to the applicant. For example, in the case of a company, consideration will be given to the financial circumstances of those owning it; in the case of an association, consideration will be given to its capacity to levy its members; and in the case of a trustee, consideration will also be given to the financial circumstances of the beneficiaries of the trust.
- 24 A publicly listed company is regarded as having sufficient financial resources.
- 25 An applicant may be required to pay a contribution towards the cost of assistance as a condition of the authorisation of the provision of assistance. The maximum amount of the contribution that may be required will be determined at each stage of the matter by the Attorney-General.

Division 5.5 When assistance will be provided through a group representative

- 26 If an application is made for the provision of assistance in a matter in which representation is being provided to a person with a like interest by a group representative, it will generally not be reasonable for the provision of assistance to be authorised for the separate representation of the applicant.
- 27 If, at the time of application, representation is not being provided by a group representative but it is apparent that members of a particular group may be affected by the inquiry, mediation or proceeding related to native title, that group may be invited by the Department to make an application for the provision of assistance on behalf of its members and other persons with like interests.

Part 6 Making an application for assistance

- 28 These Guidelines and application forms are available from the Department and are published on the Department's website.
- 29 An application must be made by the applicant, or by the applicant's agent, on the form provided by the Department. An application must be lodged in accordance with the instructions on the application form.

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Part 7 Making a decision on an application

Division 7.1 Deferral of decision

30 A decision on an application will be deferred until the Department receives all of the information required by these Guidelines or requested by the Department.

Division 7.2 Effect of failure to provide information

31 If the information required is not provided within a time nominated by the Department, the Attorney-General may refuse the application without any further consideration.

Division 7.3 Confidentiality of information

32 Information provided by an applicant, or by another person on behalf of an applicant, in relation to the application (including whether an application has been made) will be treated in confidence and may only be disclosed if:

- (a) it is necessary for purposes relevant to administering the scheme; or
- (b) it is in accordance with the applicant's express authority; or
- (c) it is necessary to correct the public record; or
- (d) it is required by law.

Division 7.4 Advice from other agencies

33 Advice may be sought from other government agencies or industry bodies regarding an application for the provision of assistance. In the course of obtaining such advice, information regarding an applicant's financial affairs or any legal advice obtained by an applicant is not to be disclosed by the Department.

Division 7.5 Assistance cannot be authorised retrospectively

34 The provision of assistance cannot be authorised from a date before the date of receipt by the Department of an application.

35 If a grant is urgently required, the provision of assistance may be authorised from the date of notice to the Department of an application if a complete application is received within 14 days of the notice. If a complete application is not received within that period, the provision of assistance may only be authorised from the date of receipt of the complete application.

Division 7.6 Assistance will be authorised in stages

- 36 The provision of assistance will be authorised for services that are likely to be required in a 6 to 12 month period. The provision of assistance may be authorised for a shorter period if appropriate. The period for which the provision of assistance is authorised is a *stage*.
- 37 If the services for which the provision of assistance is authorised will not be completed in a stage, a fresh application must be made before the expiry of the stage.
- 38 The provision of assistance will not necessarily be extended at the end of each stage. A decision will be made as to whether it is reasonable to extend the provision of assistance having regard to sections 17 to 21.

Division 7.7 Limits must be imposed on assistance authorised

- 39 An applicant will be advised of the maximum amount of the assistance authorised to be provided for a stage. If it is considered that the maximum amount will be insufficient to complete the work for that stage, an extension may be sought from the Department. However, an extension for this reason can be approved only in exceptional circumstances. Exceptional circumstances include the following:
- (a) changes to the mediation program beyond the applicant's control;
 - (b) increased court attendances as a result of orders made by the court;
 - (c) a hearing initiated by another party at which the applicant's attendance is necessary;
 - (d) other unforeseen events beyond the applicant's control that have more than a minor financial impact on the amount of the assistance required.
- 40 An increase in the maximum amount of the assistance authorised to be provided for a particular stage cannot be authorised after the stage has been completed.

Division 7.8 Native Title Practitioners Panel

- 41 A practitioner who is to provide services covered by a grant of an application for the provision of assistance must be a member of the Native Title Practitioners Panel established by the Attorney-General.
- 42 A legal practitioner or other service provider who wishes to be included on the Native Title Practitioners Panel must address the criteria determined by the Attorney-General. The criteria are available from the Department and are published on the Department's website.

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Division 7.9 Assistance may be varied or terminated

- 43 The Attorney-General may vary the provision of assistance at any time.
- 44 The Attorney-General may terminate the provision of assistance, for good reason. Examples of good reasons include the following:
- (a) misrepresentation by the applicant or the applicant's advisers;
 - (b) failure to comply with the conditions on which the provision of assistance was authorised;
 - (c) failure to comply with directions or orders of the National Native Title Tribunal or with the rules, directions or orders of a court;
 - (d) failure to comply with a request by the Department to provide information;
 - (e) failure to act reasonably;
 - (f) supervening events that make the provision of assistance no longer appropriate. For example, the services in respect of which the provision of assistance was authorised are no longer required or the purpose for which the provision of assistance was authorised no longer applies or exists.
- 45 If consideration is being given to varying or terminating the provision of assistance for misrepresentation, non-compliance or failure to act reasonably, the applicant must be asked to show cause why the authorisation of the provision of assistance should not be varied or terminated.
- 46 A grant may be terminated retrospectively for good reasons of a kind mentioned in section 44. In these cases, money paid to the grant recipient or his or her legal practitioner becomes a debt owed to the Commonwealth.

Part 8 What assistance can be authorised

Division 8.1 Assistance to a group representative

- 47 The provision of assistance may be authorised for a group representative to act as an agent for a party in an inquiry, mediation or proceeding, or in the negotiation of an ILUA or an agreement about rights conferred under subsection 44B (1) of the Act.
- 48 The provision of assistance may be authorised for a group representative to act as an agent for a party in an inquiry, mediation or proceeding in relation to an ILUA or an agreement about rights conferred under subsection 44B (1) of the Act, or in resolving a dispute about rights conferred under subsection 44B (1) of the Act.
- 49 The provision of assistance may be authorised for a group representative in respect of the costs of obtaining instructions and providing advice on resolving native title matters that affect persons who are, or who intend to become, parties to:
- (a) an inquiry, mediation or proceeding related to native title; or
 - (b) an ILUA or an agreement about rights conferred under subsection 44B (1) of the Act.
- 50 The provision of assistance may be authorised to a group representative for photocopying, telephone, facsimile, search and postage expenses incurred. This assistance is limited to the amount of the expense incurred. However, the expense is taken to be \$0.275 per page for photocopies and \$2.20 per page for facsimiles.
- 51 The provision of assistance may be authorised for executive or managerial staff of a group representative for work on native title matters for which the provision of assistance has been authorised. The maximum amount payable in respect of executive or managerial staff is \$55 per hour to a maximum of \$440 per day. However, this assistance may not be available if the provision of assistance is authorised for the remuneration of a native title officer engaged by the group representative.
- 52 For the purpose of streamlining procedures, and subject to paragraph 90 (a), the Attorney-General may make advance payment of the approved legal costs and related expenses of a stage, by way of a lump sum or instalments, to the group representative.

Division 8.2 Native title officer

- 53 If a group representative engages a native title officer, the provision of assistance for the remuneration of the native title officer may be authorised. The duties of the native title officer must be approved by the Attorney-General.

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Division 8.3 Costs of legal services

Subdivision 8.3.1 Solicitor

- 54 The provision of assistance in respect of a solicitor's fees may only be authorised for reasonable costs, which are to be determined as follows:
- (a) by reference to the document titled the *Assessment of Costs in Native Title Matters*, published by the Department in September 2011, at the hourly rate of \$290 (including GST) for a solicitor, worked out on a pro-rata basis to the nearest minute;
 - (b) without any uplift for care, skill and responsibility;
 - (c) at a maximum rate of \$27.50 per hour for administrative staff;
 - (d) at a maximum rate of \$66 per hour for a paralegal or articulated clerk who is not a legal practitioner.

Subdivision 8.3.2 Counsel

- 55 The provision of assistance in respect of counsel's fees is to be determined as follows:
- (a) counsel will only be funded in a matter if the Attorney-General considers that the case warrants the engagement of counsel;
 - (b) counsel's fees will be allowed in accordance with the following scale:
 - (i) for junior counsel — a rate of \$189.20 to \$249.70 per hour to a maximum of \$1 513.60 to \$1 997.60 per day;
 - (ii) for senior counsel — a rate of \$249.70 to \$466.40 per hour to a maximum of \$1 997.60 to \$3 731.20 per day;
 - (c) if the hearing or preparation is of lengthy duration, fees may be paid as a lump sum or at agreed rates that do not exceed the scale mentioned in paragraph (b);
 - (d) counsel's memorandum of fees must be provided with a solicitor's bill of costs.

Division 8.4 Travel costs

- 56 The reasonable travel costs of a legal practitioner may be authorised for the purpose of obtaining instructions, attending a hearing, or attending a negotiation.
- 57 The reasonable travel costs of a group representative, a native title officer or a witness may be authorised if the Attorney-General considers that the travel is necessary.
- 58 If travel by air has been approved, airfares are payable at economy rates. Other travel costs of a legal practitioner or a native title officer will be reimbursed up to the maximum applicable to the Senior Executive Service of the Department at the time of travel. Other travel costs of a group representative or a witness will be reimbursed at non-Senior Executive Service rates at the time of travel.

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- 59 Payment for time spent travelling by a legal practitioner or a group representative may only be authorised if the attendance was more than 50 km from the legal practitioner's office or the group representative's office. Payment for the attendance will be made at the rate of \$165 per hour for a legal practitioner and \$27.50 per hour for a group representative (not including a native title officer).
- 60 Tax invoices and receipts for all travel costs must be provided with a request for reimbursement.

Division 8.5 Disbursements generally

- 61 Payment will not be advanced in anticipation of a disbursement unless the Attorney-General is satisfied that special circumstances warrant payment in advance.
- 62 Prior approval is required to incur a cost exceeding \$500 for any 1 disbursement. This requirement cannot be avoided by having the service provider split the work over a number of invoices.
- 63 The maximum amounts payable in respect of an anthropologist or other expert's fee are \$110 per hour and \$880 per day.
- 64 Tax invoices and receipts must be provided for all non-travel related disbursements over \$100.

Division 8.6 Costs of an unrepresented applicant

- 65 If a legal practitioner is not engaged by the applicant, only reasonable disbursements can be authorised. The provision of assistance does not cover the costs of an applicant's time or loss of earnings in preparing a case.

Division 8.7 Costs that cannot be paid

- 66 The provision of assistance cannot be authorised for costs of a kind incurred in relation to the making of an application for the provision of assistance, or in relation to the review of a decision regarding the provision of assistance.
- 67 The provision of assistance cannot be authorised for any legal or other costs incurred between the date on which an application was made and the date on which the Attorney-General made a decision to refuse the provision of assistance.
- 68 The provision of assistance cannot be authorised for the cost of attendances on, and correspondence with, the Legal Assistance Branch of the Department.
- 69 The provision of assistance cannot be authorised for the cost of preparing an invoice.
- 70 The provision of assistance cannot be authorised for the payment of any costs that an applicant is ordered to pay to another party.

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Part 9 Conditions of assistance

Division 9.1 General conditions

Subdivision 9.1.1 Consent to the obtaining and disclosure of information

- 71 By making an application, the applicant:
- (a) acknowledges that the Department may obtain information about the application or the provision of assistance (including a legal opinion obtained about the matter for which the application is made) from other government or industry bodies or from the applicant's legal practitioner; and
 - (b) consents to the Department obtaining the information.
- 72 By making an application, the applicant (the *consenting applicant*) consents to the Department disclosing to another applicant that the consenting applicant has made an application, only for the purpose of deciding whether to authorise the provision of assistance to the consenting applicant as an individual or as a member of a group.

Subdivision 9.1.2 Agreement to pay contribution

- 73 By making an application and accepting the provision of assistance, the applicant agrees to pay any contribution determined by the Attorney-General in accordance with these Guidelines.

Subdivision 9.1.3 Acceptance of directions by the Attorney-General

- 74 Approval to provide the legal services determined by the Attorney-General to the applicant in this matter involves acceptance by the legal service provider that the Attorney-General directs the legal service provider what services have to be provided and the terms and conditions applicable to those services.
- 75 In the exercise of these terms and conditions, the Attorney-General will, in the grant of assistance or from time to time afterwards, specify the nature or ambit of the legal services the legal service provider is to provide to the applicant and the terms and conditions on which those services are to be provided.

Subdivision 9.1.4 Compliance with Guidelines and directions

- 76 The Attorney-General may issue a direction, on any issue in relation to the authorisation of the provision of assistance, that is consistent with the Act, regulations made under the Act and these Guidelines.
- 77 An applicant must comply with these Guidelines and any direction issued by the Attorney-General.

Subdivision 9.1.5 Legal practitioners prohibited from demanding payment from an applicant

- 78 Except with the prior written approval of the Attorney-General, a legal practitioner must not demand or receive payment other than a contribution determined in accordance with these Guidelines, from an applicant or from any person on behalf of an applicant, in respect of services for which the provision of assistance was authorised.

Division 9.2 Accountability requirements

Subdivision 9.2.1 Notice of changes

- 79 An applicant must notify the Department, within 14 days, of anything that could reasonably affect the initial or ongoing provision of assistance. Examples of such things include the following
- (a) a change in the applicant's financial circumstances;
 - (b) withdrawal or discontinuance by the applicant or any party;
 - (c) a significant reduction or increase in the services required;
 - (d) a change in the native title claim or a development in the law so that the applicant's interests are no longer significantly affected;
 - (e) a change in the strategy for resolving the claim;
 - (f) a change in respect of any of the matters listed in sections 17 and 20.
- 80 An applicant who is not represented by a group representative must also notify the Department of any change in the applicant's financial circumstances that could reasonably affect the initial or ongoing provision of assistance.

Subdivision 9.2.2 Reporting

- 81 By accepting the provision of assistance, the applicant agrees to disclose to the Department the terms of any settlement in relation to the matter for which the provision of assistance has been authorised.
- 82 A report must be provided in the form required by the Department at the conclusion of a stage, or upon settlement of the matter.
- 83 Reports at the conclusion of a stage must contain information about:
- (a) what has happened during a stage or since the last report; and
 - (b) what is anticipated to happen in the next stage; and
 - (c) what issues are still in contention and the reason why they are still in contention; and
 - (d) how it is proposed to resolve those issues; and
 - (e) whether agreement is likely in respect of those issues; and
 - (f) what legal advice has been provided about the prospects of reaching agreement on those issues.

Section 84

Subdivision 9.2.3 Invoicing requirements

- 84 A legal practitioner must not invoice the Department more frequently than at 3 monthly intervals, unless fees and disbursements exceed \$1 000 or the matter or stage has concluded.
- 85 Before payment of a legal practitioner's invoice will be made, the legal practitioner must submit sufficient information for an assessment to be made as to the reasonableness of the fees. If an invoice does not provide sufficient information for the assessment to be made, the Department will return it to the legal practitioner unassessed.
- 85A Invoices under a grant providing assistance must be submitted for each grant period. Invoice periods must not overlap across consecutive grants. Invoices must be submitted no later than 30 days after the grant expires. Thirty days after the grant expires, the remaining funds will no longer be available.
- 86 If a disbursement exceeds \$100, a copy of the tax invoice for the disbursement must be provided with the legal practitioner's invoice.
- 87 If a legal practitioner is requested to have a bill of costs assessed by an independent costs assessor, the legal practitioner must pay the cost of the assessment.
- 88 The amount of any contribution to be made by the applicant will be deducted from the amount of an invoice before payment by the Department.

Subdivision 9.2.4 Provision of a legal practitioner's file

- 89 A legal practitioner must provide his or her file, or any part of his or her file, in a matter for which the provision of assistance was authorised, to the Department if requested to do so by the Department.

Subdivision 9.2.5 Payment in advance to a group representative

- 90 If the Attorney-General approves a payment in advance to a group representative under section 52 for the purpose of the payment of approved legal costs and related expenses of a stage:
- (a) money paid in advance to the group representative must be deposited to an account with a financial institution maintained by the group representative solely for that purpose; and
 - (b) the group representative must account to the Department for any interest earned on money paid in advance; and
 - (c) if the payment is made by instalments — the payment of each instalment is subject to the group representative satisfying the reporting requirements in these Guidelines; and
 - (d) an extension cannot be authorised unless any payment made in advance has been acquitted to the satisfaction of the Department; and
 - (e) any money paid to the group representative that is not expended in payment of the costs for which assistance was authorised must be repaid to the Commonwealth.

- 91 For paragraph 90 (b), a person cannot use any interest earned without the express approval of the Attorney-General. The Attorney-General will only approve the expenditure of interest for purposes within the terms of the original authorisation of the provision of assistance.

Division 9.3 Repayment of assistance

Subdivision 9.3.1 Costs recovered must be paid to the Commonwealth

- 92 If an applicant is paid costs (in respect of a matter for which the provision of assistance has been authorised), the applicant must pay to the Commonwealth, within 28 days of receipt of payment of those costs, the lesser of the amount of costs received or assistance provided.
- 93 By acting for an applicant in a matter for which the provision of assistance has been authorised, a legal practitioner accepts that the Commonwealth is to be paid first from costs recovered from another party.
- 94 Failure by an applicant to take reasonable steps to recover and pay costs to the Commonwealth may result in a reassessment of the provision of assistance to the applicant.

Subdivision 9.3.2 Settlement

- 95 If a matter (in respect of which the provision of assistance has been authorised) is settled by a payment to the applicant, the applicant must pay to the Commonwealth, within 28 days of receipt of payment of the settlement sum, the lesser of the amount received or assistance provided.

Subdivision 9.3.3 Irrevocable licence to use intellectual property

- 96 By accepting the provision of assistance, the applicant and the applicant's legal practitioner grant to the Commonwealth an irrevocable licence to use, adapt and exploit the intellectual property in any ILUA or agreement drafted or concluded with that assistance.
- 97 The Attorney-General retains the right to waive the requirement mentioned in section 96. However, the Attorney-General will not waive the requirement if the party who objects to the requirement is receiving Commonwealth funding in relation to native title.
- 98 The licence granted to the Commonwealth does not extend to confidential material such as sensitive personal, cultural or financial information.

Division 9.4 Special conditions

- 99 The Attorney-General may impose special conditions on the provision of assistance, that are consistent with the Act, regulations made under the Act and these Guidelines.

Section 100

Part 10 Right of review

Division 10.1 Internal review

- 100 Reasons must be provided to an applicant if an application for the provision of assistance is refused, varied, terminated or made subject to special conditions, including a requirement for the applicant to pay a contribution towards the cost of assistance.
- 101 An applicant may seek an internal review of the following decisions:
- (a) refusal to authorise assistance;
 - (b) variation of assistance;
 - (c) termination of assistance;
 - (d) imposition of special conditions on assistance, including a requirement for the applicant to pay a contribution towards the cost of assistance.
- 102 An applicant may only seek an internal review of a decision on the payment of an invoice in relation to the provision of assistance if the amount under dispute is at least equal to the greater of the following:
- (a) 15% of the original invoice;
 - (b) \$100.
- 103 A request for internal review must be received by the Department within 28 days of the date of the letter notifying the applicant of the reasons why the provision of assistance was refused, varied, terminated or made subject to special conditions, including a requirement for the applicant to pay a contribution towards the cost of assistance.
- 104 The review must be conducted by a decision maker other than the original decision maker.
- 105 A decision maker who conducts an internal review of a decision on the payment of an invoice in relation to the provision of assistance may only vary the decision if the amount of variation is at least equal to the greater of the following:
- (a) 15% of the original invoice;
 - (b) \$100.

Division 10.2 Information regarding avenues for redress

- 106 A letter from the Department advising an applicant of a decision in respect of an application must include information regarding the right to internal review under these Guidelines.

Part 11 Transitional arrangements

- 107 The provision of assistance authorised by the Attorney-General before these Guidelines commenced is unaffected until completion of the stage or services for which the provision of assistance was authorised, with the exception of matters in which the provision of assistance authorised has not been used since 1 January 2006. In such a case, the applicant must submit a new application for the provision of assistance.
- 108 Applications that were received, but not determined, before the commencement of these Guidelines will be decided under the guidelines applicable at the date the application was received by the Department.

Section 109

Part 12 Further information for applicants

109 Telephone inquiries should be directed to (02) 6250 6770. Written inquiries should be directed to:

Assistant Secretary
Legal Assistance Branch
Attorney-General's Department
National Circuit
BARTON ACT 2600.

Notes to the *Native Title (Provision of Financial Assistance) Guidelines 2006*

Note 1

The *Native Title (Provision of Financial Assistance) Guidelines 2006* (in force under subsection 183 (4) of the *Native Title Act 1993*) as shown in this compilation is amended as indicated in the Tables below.

Table of Instruments

Title	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Guidelines on the Provision of Financial Assistance by the Attorney-General under the Native Title Act 1993</i>	20 Dec 2006 (see F2006L04231)	1 Jan 2007	
<i>Native Title (Provision of Financial Assistance) Amendment Guidelines 2011 (No. 1)</i>	7 Oct 2011 (see F2011L02024)	8 Oct 2011	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	rs. 2011 No. 1
Part 8	
Division 8.3	
S. 54.....	rs. 2011 No. 1
Part 9	
Division 9.2	
S. 85.....	rs. 2011 No. 1
S. 85A	ad. 2011 No. 1
