

# **National Native Title Tribunal Amendment Regulations 1998 (No. 3)**

## **1998 No. 281**

EXPLANATORY STATEMENT

STATUTORY RULES 1998 NO. 281

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

*Native Title Act 1993*

NATIONAL NATIVE TITLE TRIBUNAL AMENDMENT REGULATIONS 1998 (No. 3)

Subsection 215(1) of the *Native Title Act 1993* (the Act) empowers the Governor-General to 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.

Subsection 215(2) provides that the Governor-General may make regulations prescribing fees for certain matters under the Act including fees to be paid for inspecting the Register of Indigenous Land Use Agreements (s215(2)(a)(i)), fees to be paid to obtain access to records or information kept by the Native Title Registrar under section 98A of the Act (s215(2)(aa)(i)), and for the waiver of fees in relation to applications made to the Native Title Registrar (s215(b)(ia)).

Subsection 4(1) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make regulations, the regulations may be made before the Act comes into operation. Subsection 4(2A.) of the Acts Interpretation Act provides that regulations made in these circumstances take effect on or from the date 'specified' in the regulations, provided that that date is not earlier than the date on which the Act concerned comes into operation.

The *Native Title Amendment Act 1998* (the Amendment Act) commences on 30 September 1998, except for Part 1 of Schedule 3 which commences on 30 October 1998. Subparagraph 215(2)(a)(i) is inserted in the Act by item 40 of Schedule 1 of the Amendment Act, subparagraphs 215(2)(aa)(i) and 215(b)(ia) is inserted in the Act by items 76 and 78 of Schedule 2 of the Amendment Act.

Under the old Act, applications for a determination of native title or compensation were lodged with the National Native Title Tribunal which had the function of making determinations for unopposed or agreed applications, with opposed applications being referred to the Federal Court for a determination. The Amendment Act provides for applications for a determination of native title or compensation to be made to the Federal Court, and for the Federal Court to decide all applications for a determination of native title or compensation.

The purpose of the Regulations is to delete references in the existing Regulations to native title and compensation applications being made to the National Native Title Tribunal and to make consequential amendments to the Regulations resulting from changes made by the Amendment Act.

Details of the Regulations are as follows:

Regulation 1 - Name of regulations

Regulation 1 provides that the regulations are the *National Native Title Tribunal Amendment Regulations 1998*.

## Regulation 2 - Commencement

Regulation 2 provides that the regulations commence on 30 September 1998, the day on which the Amendment Act, other than Part 1 of Schedule 3, commences.

## Regulation 3 - Amendment

Regulation 3 provides that the National Native Title Tribunal Regulations are amended as set out in these regulations.

## Regulation 4 - Citation

Regulation 4 substitutes new regulation 1 which provides that the regulations will be called the Native Title (Tribunal) Regulations 1993.

## Regulation 5 - Regulation 4 (Form in which certain applications are to be made)

Regulations 5 substitutes new regulation 4. Subregulation 4(1) refers to those applications that can continue to be made to the Tribunal under section 75 of the Act. Subregulation 4(2) provides for the information to be included in the application and for the documents to accompany the application.

## Regulations 6 and 7 - Applications

Regulations 6 and 7 omit regulations 5 and 6. The prescribed information and documents to accompany applications made to the Tribunal is now covered by subregulation 4(2).

## Regulation 8 - Regulations 7 (Lodgment of applications - fees)

Regulation 8 substitute new regulation 7 which has been amended so that it only refers to those application that can continue to be made to the Tribunal.

## Regulation 9 - Regulation 8 (When fees are not payable)

Regulation 9 inserts new subregulation 8(c)(v). New subregulation 8(c)(v) provides that an application fee is not payable if the Native Title Registrar, having regard to the income, day to day living expenses, liabilities and assets of the person who is otherwise liable to pay the fee, waives the fee on the ground that payment of the fee would impose financial hardship on the person. This provision relates only to applications that can be made to the National Native Title Tribunal. The Federal Court of Australia Regulations provide a similar waiver of fees for applications filed in the Federal Court.

## Regulations 10 and 11

Regulations 10 and 11 delete or change references to the Native Title Act to reflect the changes made by the Amendment Act.

## Regulation 12 - Regulation 15 (Fee for inspection of Registers)

Regulation 12 amends regulation 15 to provide fees to be paid for inspecting the Register of Indigenous Land Use Agreements (s 199D(2)) and for fees to be paid to obtain access to records or information kept by the Native Title Registrar under section 98A of the Act.

## Regulation 13 - Schedule 1 (Forms)

Regulation 13 consequentially amends Schedule 1 of the Regulations by omitting the forms that are no longer relevant, revises Forms 4 and 5 to reflect changes made to the Native Title Act by the Amendment Act and substitutes and new Form 6 which simplifies the wording and structure of the form.