

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 166

Issued by the authority of the Attorney-General

Native Title Act 1993

Native Title (Tribunal) Amendment Regulations 2005 (No. 1)

Subsection 215(1) of the *Native Title Act 1993* (NTA) provides that the Governor-General may make regulations prescribing matters required or permitted by the NTA to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the NTA.

Subsection 215(2) of the NTA further provides that the Governor-General may make regulations prescribing fees for certain matters under the NTA, including fees to be paid for inspecting the public registers kept by the Native Title Registrar (the Registrar) within the National Native Title Tribunal (NNTT), and fees to be paid to obtain access to records or information kept pursuant to section 98A of the NTA. Regulations may also provide for the waiver or refund of such fees.

These Regulations amend the Native Title (Tribunal) Regulations 1993 (the Principal Regulations) by removing the prescribed fees for inspecting the registers kept by the Registrar and for accessing records or information kept pursuant to section 98A of the NTA.

The amendments follow on from amendments made to the NTA by the *Law and Justice Legislation Amendment Act 2004* (LJLAA).

The three public registers kept by the Registrar are the Register of Native Title Claims, which contains information about native title claims, the National Native Title Register, which contains information about determinations as to whether or not native title exists, and the Register of Indigenous Land Use Agreements, which contains information about such agreements made pursuant to the NTA. Section 98A of the NTA also enables the Registrar to keep records and information as he or she considers appropriate, and to make them available to the public, having due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

Former subsections 187(2), 194(2) and 199D(2) of the NTA made the payment of a prescribed fee to inspect the registers mandatory. No similar provision applied to information or records kept pursuant to section 98A.

Payment of the fees is no longer considered appropriate, particularly given that the NNTT provides other extensive information services free of charge under other provisions of the NTA. The imposition of a specific fee was found to be difficult to administer and ran counter to the objective of increasing access to information on native title processes. Accordingly, subsections 187(2), 194(2) and 199D(2) of the NTA were repealed by the LJLAA making it no longer mandatory to pay a fee to

inspect the registers. Since the repeal of these subsections, the NNTT has not imposed a fee for inspection of the registers.

The amendments to the Principal Regulations removing the prescribed fee is consistent with the LJLAA amendments.

As such, the amendments:

- repeal Regulation 15, which prescribed the fees to be paid under subsections 187(2), 194(2) and 199D(2) of the NTA, and for accessing information kept under section 98A
- remove references to Regulation 15 in Regulations 16 and 17. Regulation 16 provides for biennial increases in fees prescribed by the Principal Regulations. Regulation 17 provides for the method of calculation of the fee increases provided for by Regulation 16, and
- repeal Regulation 15A, which provided grounds upon which the Registrar could waive the fees that were prescribed by Regulation 15.

The NNTT was consulted about these amendments.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence the day after they are registered on the Federal Register of Legislative Instruments.