

## EXPLANATORY STATEMENT

### *Legislative Instruments Act 2003 – Section 26*

#### ***Native Title (Provision of Financial Assistance) Amendment Guidelines 2011 (No.1)***

The Attorney-General has made the *Native Title (Provision of Financial Assistance) Amendment Guidelines 2011 (No.1)* (**these Guidelines**) under subsection 213A (5) of the *Native Title Act 1993* (the Act).

The Act specifies no other conditions that need to be satisfied before the power to make the proposed Guidelines may be exercised.

These Guidelines are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

These Guidelines commence on the day after their registration on the Federal Register of Legislative Instruments (**FRLI**) and they amend the *Guidelines on the Provision of Financial Assistance by the Attorney-General under the Native Title Act 1993* (**the previous Guidelines**).

#### **Likely impact and effect of these Guidelines**

These Guidelines on commencement will impose a flat hourly rate of \$290 (GST inclusive) on a pro-rata basis to the nearest minute, for all professional costs under any grants approved under section 213A of the Act on or after the commencement of these Guidelines. The revised flat hourly rate replaces the rates specified in the *Federal Court Rules 2011*.

The revised flat hourly rate should reduce administration by costing work on an hourly basis rather than across all items under the Federal Court Rules and recognises the correlation between Commonwealth legal assistance and legal aid schemes.

#### **Regulatory impact**

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed the view that no regulatory impact analysis is required for the Guidelines. The OBPR reference number is ID 13018.

#### **Description of the provisions of these Guidelines**

Further details about the particular clauses of these Guidelines are set out below.

##### **Clause 1 – Name of Guidelines**

Sets out the name of the Instrument.

##### **Clause 2 – Commencement**

States that these Guidelines commence on the day after they are registered on the FRLI.

### **Clause 3 – Amendment of *Guidelines on the Provision of Financial Assistance by the Attorney-General under the Native Title Act 1993***

This clause provides that the previous Guidelines are amended as set out in Schedule 1.

#### **Schedule 1 – Amendments**

##### **Item [1] Title**

Item 1 substitutes the title of the previous Guidelines with ‘Native Title (Provision of Financial Assistance) Guidelines 2006’ to conform with the usual convention for titling of legislative instruments.

##### **Item [2] Item 54**

Item 2 amends paragraph 54 of the previous Guidelines to remove reference to the ‘scale of costs set out in Schedule 2 to the Federal Court Rules’. The amendment provides that the provision of assistance for solicitor’s fees may only be authorised for reasonable costs which are to be determined as follows:

- By reference to the document titled ‘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;
- Without any uplift for care, skill and responsibility;
- At a maximum rate of \$27.50 per hour for administrative staff;
- At a maximum rate of \$66 per hour for a paralegal or articulated clerk who is not a legal practitioner.

##### **Item [3] Item 85**

Item 3 amends paragraph 85 of the previous Guidelines. The amendment provides that a legal practitioner’s invoice must contain sufficient information for assessment of reasonable costs before payment can be made. Any incomplete invoice will be returned unassessed.

##### **Item [4] Item 85A**

Item 4 inserts a new paragraph to provide that an invoice under a grant providing assistance must be submitted for each grant period and that the invoice periods must not overlap across consecutive grants. Item 4 also states that invoices must be submitted within 30 days of the expiration of the grant. Any remaining grant funds will be decommitted at that time.