

**Authorised Version No. 001**  
**Traditional Owner Settlement (Negotiation  
Costs) Regulations 2015**

**S.R. No. 109/2015**

Authorised Version as at  
29 September 2015

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**S.R. No. 109/2015**

Authorised Version as at  
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The Governor in Council makes the following Regulations:

Dated: 29 September 2015

Responsible Minister:

MARTIN PAKULA  
Attorney-General

MATTHEW McBEATH  
Clerk of the Executive Council

**1 Objective**

The objective of these Regulations is to prescribe the method for calculating the reasonable costs of negotiating land use activities under the **Traditional Owner Settlement Act 2010**.

**2 Authorising provision**

These Regulations are made under section 91 of the **Traditional Owner Settlement Act 2010**.

**3 Definitions**

In these Regulations—

*authorised person* means either of the following who is authorised to prepare for or conduct negotiations on behalf of a traditional owner group entity under section 50 of the Act—

- (a) a member of the traditional owner group;

- (b) an employee of the traditional owner group entity;

***car expenses*** means costs based on the method issued by the Australian Taxation Office under the Income Tax Assessment Act 1997 of the Commonwealth for individual tax assessment purposes;

***decision-making costs*** means costs based on any one or more of the following—

- (a) the time that an authorised person spends preparing for and conducting the negotiation under section 50 of the Act;
- (b) the wages, salary or fees paid to an authorised person in respect of preparing for and conducting the negotiation;
- (c) overheads and on-costs in respect of preparing for and conducting the negotiation;

**Examples**

Site analysis, writing reports, considering recommendations.

***service provider*** means a person who, or body that, performs any or all of the functions of a representative Aboriginal/Torres Strait Islander body within the meaning of the Native Title Act 1993 of the Commonwealth in accordance with section 203B of that Act;

***the Act*** means the **Traditional Owner Settlement Act 2010**;

***travel allowance*** means the cost of accommodation, meals and incidentals based on reasonable travel allowances determined by the Australian Taxation Office under the Income Tax Assessment Act 1997 of the Commonwealth each financial year and released in a Taxation Determination;

***travel costs*** means costs based on any one or more of the following—

- (a) car expenses;
- (b) public transport;
- (c) a travel allowance.

**Examples**

Car expenses associated with site visits, or public transport to attend a special meeting.

**4 Calculation of negotiation costs**

(1) For the purposes of section 52(2) of the Act, the prescribed method for calculating the reasonable costs of negotiating under section 50 of the Act is the method that—

- (a) uses Form 1; and
- (b) includes any one or more of the following costs incurred by the traditional owner group entity in preparing for and conducting the negotiation—
  - (i) decision-making costs;
  - (ii) the cost of professional services;

**Examples**

Legal services, economic services, geological services, engineering services.

- (iii) travel costs.

- (2) The costs of services provided by a service provider may only be included as reasonable costs calculated in accordance with subregulation (1) if—
  - (a) the relevant traditional owner group entity is liable to pay for services provided by the service provider; and
  - (b) the service provider is not funded by the Commonwealth under section 203FE of the Native Title Act 1993 of the Commonwealth.
- (3) The reasonable costs of negotiating under section 50 of the Act are to be calculated in accordance with subregulation (1)—
  - (a) at the end of each period of 3 months of negotiation in respect of that period; and
  - (b) at the end of the negotiation in respect of any period for which reasonable costs have not been calculated in accordance with paragraph (a).
- (4) For the purposes of subregulation (3), the first period of 3 months of negotiation begins on the day on which the notice under section 49(1) of the Act in respect of the negotiation activity or agreement activity comes into effect.

## Form 1—Calculation of reasonable negotiation costs

Regulation 4

To: *[insert name of responsible person]*

Address: *[insert address details]*

The land use activity: *[insert the land use activity or land use activities]*

### Note

The table of costs lists those costs incurred by the traditional owner group entity in preparing for and conducting a negotiation under section 50 of the **Traditional Owner Settlement Act 2010** in relation to the land use activity specified above.

<i>Item</i>	<i>Description</i>	<i>Amount</i>
1	Decision-making costs (For example, site analysis, writing reports, considering recommendations.)	\$
2	Professional services costs (For example, legal services, economic services, geological services, engineering services.)	\$
3	Travel costs (For example, car expenses associated with site visits, or public transport to attend a special meeting.)	\$
4	Total	\$
	Subtotal	\$
	GST	\$
	Total	\$

Issued for and on behalf of *[insert name of traditional owner group entity]* ABN *[insert ABN]*, by the following authorised delegate of *[insert name of traditional owner group entity]*.

Traditional Owner Settlement (Negotiation Costs) Regulations 2015  
S.R. No. 109/2015  
Form 1—Calculation of reasonable negotiation costs

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Name and position of authorised representative: [insert name]

[insert position]

Signed: [insert signature]

Name and position of second authorised representative: [insert name]

[insert  
position]

Signed: [insert signature]

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Traditional Owner Settlement (Negotiation Costs) Regulations 2015, S.R. No. 109/2015 were made on 29 September 2015 by the Governor in Council under section 91 of the **Traditional Owner Settlement Act 2010**, No. 62/2010 and came into operation on 29 September 2015.

The Traditional Owner Settlement (Negotiation Costs) Regulations 2015 will sunset 10 years after the day of making on 29 September 2025 (see section 5 of the **Subordinate Legislation Act 1994**).

#### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

##### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

##### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

##### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

## **2 Table of Amendments**

There are no amendments made to the Traditional Owner Settlement (Negotiation Costs) Regulations 2015 by statutory rules, subordinate instruments and Acts.

### **3 Amendments Not in Operation**

There are no amendments which were Not in Operation at the date of this publication.

#### **4 Explanatory details**