



National
Native Title
Tribunal



The right to negotiate enables native title parties to have a say on some proposed developments.

Facilitating timely and effective outcomes.

Understanding future acts

Proposed activities or developments that may affect or impair native title are classed as 'future acts' under the Native Title Act.

Because claimant applications may take years in mediation or court proceedings before a final decision is reached, a system was devised to let claimants and project proponents negotiate about their interests while native title applications are being resolved. This is the 'future act process'.

Native title claimants can negotiate about some proposed developments over land and waters if they have the right to negotiate. Claimants gain this right if their native title application satisfies the registration test conditions or if native title has already been found to exist.



Yamatji Marlpa Aboriginal Corporation liaison officers Patrick Cameron and Gavin Little discuss a map of country to find a particular mining tenement for a future act.

The right to negotiate is not a right to stop a project going ahead. It only applies to certain types of future acts, such as mining and some compulsory acquisitions. For some future acts, there may not be a right to negotiate but other

rights may be available. These are usually administered by state and territory governments and the Tribunal is not generally involved.

The Tribunal administers the future act processes that attract the right to negotiate under the Commonwealth legislation—that is, generally future acts relating to mining. The Tribunal's role includes mediating between parties, conducting inquiries and making decisions where parties can't reach agreements (called 'future act determinations').

The right to negotiate does not apply to other types of future acts, such as the construction of public works or the management of water. In these circumstances, claimants and native title holders may have other procedural rights such as the right to be notified, to comment or to be consulted, to object and to be heard by an independent umpire.

How the right to negotiate is triggered

Notice is required by section 29 of the Native Title Act, which sets out what must be done where the native title will be affected by the future act.

The notice is given by placing an advertisement in major newspapers. It must also be given directly to any registered native title body corporate. If there is no body corporate it must go to any registered native title claimant and native title representative body for the area.

People who claim to hold native title in the area, but have not yet made a native title claimant application, have three months from the date given in the section 29 notice to file a claim if they want the right to negotiate about the proposed future act.

To get that right, their claim must also be registered within four months of the date given in the notice.



If the right to negotiate applies, the government, developer and registered native title parties must negotiate in good faith.

Negotiations

If the right to negotiate applies, the government, the developer and the registered native title parties must negotiate 'in good faith', at least about the effect of the proposed development on native title rights and interests with a view to obtaining agreement.

If agreement cannot be reached and providing six months has passed after the notification date, any party can ask the Tribunal to decide if the future act can go ahead, and if so, on what conditions it can proceed.

The Attorney-General can provide assistance—for details visit www.ag.gov.au .

The fast-tracking process

If a government considers that some future acts are expected to have minimal impact on native title, the grant of the tenement can be fast-tracked using a process known as the 'expedited procedure'.

If the expedited procedure is used and there is no objection by native title parties, the future act can be done without negotiations.



The Kuruma Marthudunera People meet to discuss a future act on their country with a mining company representative.

Native title parties can object to a proposed future act being fast-tracked and have four months from the date given in the section 29 notice to do so.

If the objection is successful, the negotiation in good faith process is required. If the objection does not succeed, the proposed future act can go ahead without a negotiation process.

States and territories can set up their own bodies to handle future act matters apart from the Tribunal. So far, only South Australia has done so through its Environment, Resources and Development Court (with the exception of petroleum tenements which are still processed under the Commonwealth scheme).

Pictures top and inside courtesy of Yamatji Marlpa Aboriginal Corporation.



For more information about native title and services of the Tribunal please contact the National Native Title Tribunal, GPO Box 9973 in your capital city or **Freecall 1800 640 501**. Information is also available at www.nntt.gov.au .

The National Native Title Tribunal has offices in Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth and Sydney.

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