



# Putting native title in context

**C**ONCERNS have been expressed about the National Native Title Tribunal's estimate that it will take about 30 years to resolve native title claims across Australia.

Although a 30-year forecast may seem daunting, this estimate needs to be put in context.

Few outcomes were reached in the early years of the Native Title Act. It took some time for the law around native title to be clarified and for the framework, which now exists for negotiating outcomes, to be established.

The majority of native title outcomes have been made in recent years.

There have been 109 native title determinations over 828,650 sq km of Australia's land mass. Most determinations are now made by agreement, and the days of long trials as the main way to deal with claims seem to have passed. In addition, 332 Indigenous land use agreements have been reached over 913,000 sq km, an area almost the size of South Australia.

It can be a long process. For those Aboriginal people and Torres Strait Islanders who have been successful, it has taken an average of about five to seven years (and sometimes up to a decade) to reach settlement.

There are currently over 500 unresolved native title claims. Around one-quarter of these were lodged before 1998, half between 1998 and 2002 and the remaining quarter since 2003.

There are still about 30 claims being lodged each year. The reality is many of the claims finalised so far were more straightforward to resolve than those that remain.

To help get more claims into mediation and for mediation to be quicker and productive, obstacles need to be overcome.

The first and main obstacle for claimants is supplying the detailed information about their connection to their traditional

## Native Title and You



**By National Native Title Tribunal President GRAEME NEATE**

country. The law requires a high level of evidence of each group's traditional connection to claimed land before they can obtain a determination that native title exists. This evidence needs to go back to the date when the Crown asserted sovereignty over Australia. Providing connection information is expensive and the expertise available in Australia to develop these reports is limited. Most connection reports take two to three years to research and may take up to three years to be assessed by the relevant State governments.

Second, there needs to be an analysis of past dealings with the land to see where native title has been extinguished or where it might survive.

Third, the number of parties that may be involved in an individual claim can reach into the hundreds. It is important to identify early on who has relevant interests in the claim area and encourage those who need not be involved to withdraw.

Fourth, disputes about overlapping claims need to be resolved. About 45 per cent of current claims have areas that overlap with neighbouring claims. These issues can cause long delays because governments and some other parties will not participate in negotiation unless overlaps are resolved.

Once matters are in mediation, it is largely for the

parties to decide what outcomes will be reached.

To produce a fundamental shift in the way native title claims are resolved, parties need to be clear about their objectives.

Native title determinations often deliver few direct benefits to Indigenous Australians. Most determinations, in isolation, fall short of claimants' aspirations. Sometimes alternative agreements can offer more tangible results.

The claimants need to decide whether social justice measures, economic outcomes or a combination of the two may be more achievable than a native title determination.

Government parties are pivotal to producing faster and better outcomes.

They need to build on examples of creative packages already negotiated, rather than concentrate exclusively on whether claimants have met the legal requirements to prove native title.

Sufficient resources need to be available for native title representative bodies and others to actively participate in agreement-making. This may not simply mean an increase in funding. It could include a more strategic use of the Tribunal to provide expert services to participants, such as research, mapping, tenure analysis and other activities that may currently be duplicated across the country.

With a legal framework in place, the courts are no longer the appropriate forums for resolving most native title issues. Negotiation and new approaches to settling claims have the potential to provide just and enduring outcomes.

● I spoke in detail on these and other issues at the recent 2008 AIATSIS native title conference. For a copy of the speech go to [www.nntt.gov.au](http://www.nntt.gov.au) under news and communication, speeches and papers.