



NT reforms may be the last chance

Native Title and You



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Reforms of the native title system will achieve stronger and faster results for many of the remaining claims around Australia if native title claimants, governments and others can work together in good faith to negotiate outcomes.

In recent years the native title system has been criticised, including by some of our most senior judges. Criticisms have been based on concerns that the law is unclear, the process is slow and expensive, and some results may be unsatisfactory.

When announcing 'a plan for practical reform to improve the performance of the native title system' in 2005, Attorney-General Philip Ruddock stated that although the 'increasing number of native title determinations and agreements demonstrate the system is working ... the current framework is still too costly and too time-consuming'.

This plan to reform the system will potentially affect everyone involved in native title – including claim groups, native title representative bodies, respondent parties, prescribed bodies corporate and the Federal Court.

There were recommendations that the National Native Title Tribunal be given some extra powers and functions to deal with native title claims that are referred to it by the Federal Court for mediation.

These recommendations were accepted and the Australian Parliament is considering legislative changes now.

Concerned

Many people are concerned about the amount of time spent in mediation. Experience shows that even those claims with the resources and goodwill that conclude with a consent determination usually take many years to resolve.

The Tribunal considers each claim in mediation carefully and will recommend that mediation cease if matters are not progressing.

The proposed powers and functions should make the progress (or lack of progress) of claims more transparent, and will put a spotlight on the mediation performance of all participants.

A range of factors within these reforms may influence people's behaviour and promote the resolution

of claims by agreement, including:

- Limitations on who can become (or remain) parties to claims
- The requirement that parties mediate in good faith
- The power of the Tribunal to direct people to attend mediation conferences and to produce documents that might assist parties to reach agreement
- Conditions on the grant of funding to respondent parties
- The potential for partial determinations of native title without the need for some parties to consent.

The powers and functions of the Tribunal on their own will not provide the way forward.

Rather, the focus should be on how the parties can work together to secure just and enduring outcomes in a timely way.

The additional powers and functions will be tools to assist parties to reach that objective.

The history of long, expensive and sometimes inconclusive court cases shows the need for a stronger agreement-making regime.

The proposed reforms offer, possibly, the last hope for the current native title system to produce results for everyone involved.

For a more in-depth analysis my Negotiating Native Title Reform Conference 2007 presentation, 'New powers and functions of the NNTT: An overview and analysis', is available at <http://www.nntt.gov.au/metacard/speeches.html>