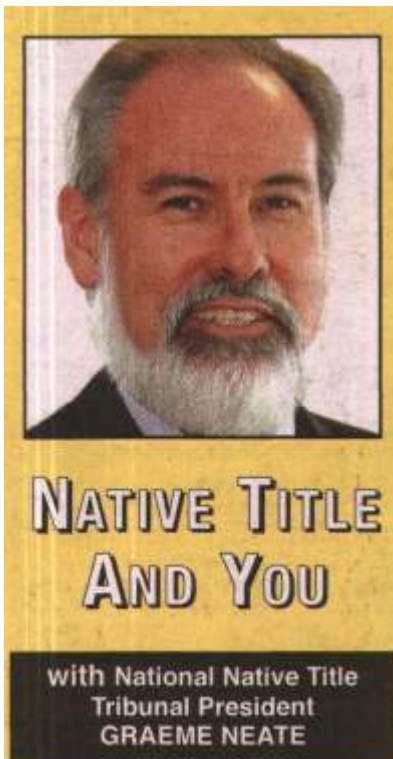




Time of change for native title



THE introduction of the *Native Title Act* in 1994 was a significant event in Australia's history. The Act, among other things, gave some Indigenous people the chance to have their traditional rights and interests to land and waters recognised under the general law of Australia.

As readers with experience in native title would understand, this is a developing and very complex area of law.

New challenges arise in light of experience and decisions of courts, and the Act has been amended several times over the past 16 years.

Two sets of amendments were introduced last year, and more are being considered. To help you keep up to date with changes, I will summarise amendments that were made last year, the changes that the Parliament is debating and an idea for change that the Commonwealth Attorney-General has asked people to comment about.

Native Title Amendment Act 2009

Reforms in 2009 were aimed at improving the operation of the native title system and the outcomes for parties. The main changes came into force on 18 September 2009.

As well as some minor and technical changes, the amendments focused on five main areas:

- The Federal Court now decides whether the Court, the National Native Title Tribunal or another individual or body should mediate each native title claim.
- Where the parties reach

agreement, the Court may rely on an 'agreed statement of facts' between the key parties, to simplify the processes in making consent determinations of native title. The Court can accept a statement of facts agreed to by the parties without them necessarily having to submit the evidence to the Court.

- The Court can make orders about matters beyond native title if the parties ask for those orders. This recognises the broad nature of agreements being negotiated by native title parties which can help deliver real economic and other benefits for claimants.

- Changes to the laws about evidence which make it easier for the Court to hear evidence of traditional laws and customs, particularly in relation to proceedings that began before the evidence law changes came in, on 1 January 2009.

- Processes for the recognition of native title representative bodies, with the aim of reducing administrative time and cost while keeping the system of recognition for the bodies open and fair.

Native Title Amendment Bill (No. 2) 2009

The provision of public housing and infrastructure for health, education and emergency services in Indigenous communities is the focus of proposed amendments introduced in October 2009.

The Bill proposes a new process to speed up the delivery and construction of housing and infrastructure for communities on land where native title may exist, without the need for an Indigenous land use agreement or



compulsory acquisition of native title.

The process relates to the future act sections of the *Native Title Act*. It is anticipated that these amendments will remove uncertainty about the application of future act processes.

The proposed process aims to strike a balance between the urgent need for services and the need to engage meaningfully with native title holders, to protect their rights and interests and give them the opportunity to provide input into proposed projects.

The amendments also encourage State and Territory governments to act quickly to address the need for housing in Indigenous communities.

Written and oral submissions about this Bill have been considered by a Senate Committee which is due to report this week.

Possible historical extinguishment amendment

On 14 January this year, the Attorney-General issued a discussion paper outlining another possible change to the Act. This would allow the

government party and the applicant to agree to disregard the historical extinguishment of native title on land that had been set aside as national parks or to preserve the natural environment.

Such an amendment would not affect any existing interests in the area and could provide opportunities for more claims to be settled by negotiation rather than litigation.

The native title page on the Attorney-General's Department website at www.ag.gov.au has more information about this proposal. The department welcomes submissions on this proposal until 19 March.

What does this mean?

Native title legislation is complex. It covers not only processes for dealing with native title claims but also what can happen on land where native title exists.

The Tribunal welcomes reforms that may speed up the resolution of native title issues and contribute to better outcomes for parties. We will continue to work with parties to facilitate timely and effective native title and related outcomes.