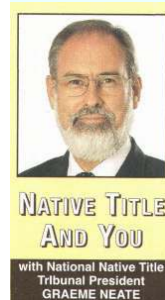




Challenges ahead



Significant challenges must be met if the promise of native title recognition is to be realised for some Indigenous Australians.

The native title scheme has given Aboriginal people and Torres Strait Islanders a seat at the negotiation table with governments, mining companies and others. It has also given some Indigenous people legal recognition of their rights to their traditional lands or waters, and has provided a framework for agreement-making about the use of these areas.

There are currently about 510 native title applications nationally. Most were lodged more than five years ago and new claims continue to be submitted. Claimant applications have taken, on average, about six years to resolve by agreement and many people have expressed concern about the time it takes to achieve these outcomes and the complexity of proving native title.

Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma recommended in his 2007 report on the operation of the Native Title Act that there be a comprehensive review of the whole native title system.

On 19 March, Commonwealth Attorney-General Robert McClelland introduced the Native Title Amendment Bill 2009 to Parliament. He said the

amendments aimed to achieve 'more negotiated native title outcomes in a more timely, effective and efficient fashion' and 'encourage a broader and more flexible approach to the resolution of native title'.

Under the proposed amendments, the Federal Court would have greater control of the management of native title claims from start to finish, and would be able to make consent orders about matters beyond native title.

It would also be easier for the Court to hear evidence of Aboriginal and Torres Strait Islander law and custom, where appropriate.

Other amendments are aimed at streamlining the recognition processes for native title representative bodies. The Parliament will debate these proposed changes in the next few weeks.

Native title is the subject of the latest edition of the Australian Law Reform Commission's journal *Reform*.

The articles were written by people closely involved in native title, including claimants, lawyers, public office holders and academics. They looked at native title from various perspectives, and some made recommendations for change.

High Court Chief Justice and former Tribunal President Robert French suggested in his article that native title laws might be

changed to create a presumption in favour of native title applicants. That presumption could be challenged by a respondent party, including a government. Such a change would, he wrote, 'lighten some of the burden' of proof from applicants.

Currently claimants must prove they have maintained an ongoing connection to their country since the British Crown asserted its sovereignty. This is particularly difficult for claimants in areas where there has been a history of dispossession.

At the launch of *Reform*, the Attorney-General said he was 'interested in the constructive proposals' contained in the journal, 'especially those aimed at further encouraging agreement making'.

The native title system has delivered benefits for many people. But there is always room for improvement – both in terms of the legal procedures and the approach taken by parties.

The lessons learned and experience gained over the past 15 years can be built upon to meet the challenges ahead.

We hope the current focus on making the native title system work better will lead to more timely and effective native title and related outcomes through the development of agreements that respect all parties' rights and interests.



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