



National
Native Title
Tribunal

The Right to Negotiate

Information sheet

2020

Understanding Future Acts

A future act is an act in relation to land or waters that affects native title rights and interests. Examples of future acts include mining, exploration, building public infrastructure, compulsory acquisition of land, some lease renewals and some legislative changes. A future act will be invalid to the extent that it affects native title unless there is compliance with the procedures set out in the *Native Title Act 1993* (Cth) (NTA). When a future act is proposed a native title party will have procedural rights which will vary depending on the nature of the future act.

For certain future acts, such as the grant of exploration or mining and petroleum tenements developments and some compulsory acquisitions, the NTA provides registered claimants and native title holders with a right to negotiate about the future act. The right to negotiate is not a right to stop a future act from going ahead, but it does give native title parties a right to be involved in discussions and have their say about the proposal.

If the right to negotiate does not apply, such as where the future act relates to the management of water, other rights may be available to registered claimants and native title holders. These include the right to be notified, the right to comment or be consulted, and the right to object.

How is the right to negotiate triggered?

Where a proposed future act attracts the right to negotiate, the government intending to do the act must give notice of the proposal in accordance with section 29 of the NTA. The government must notify the public (usually by advertising in major newspapers) as well as any registered native title claimant or body corporate. If there is no registered native title body corporate in relation to the area that will be affected by the future act, the notice must also be given to any Aboriginal/Torres Strait Islander representative body for the area.

Persons who claim to hold native title in the area, but have not yet made an application to the Federal Court, must file a native title claim within three months from the date given in the section 29 notice, and the claim must be registered within four months of the date given in the notice, in order to have a right to negotiate about the future act.

If there are no registered native title claimants or native title holders (native title parties) at the end of the four month period from the date given in the section 29 notice the future act can be done without further reference to the NTA.

Negotiations

If the right to negotiate applies, the government, the proponent and the native title parties must negotiate 'in good faith' with a view to reaching agreement about the proposed future act. If requested, the Tribunal must mediate among the parties to assist them to reach agreement.

If an agreement cannot be reached and six months have passed since the notification date, any party can ask the Tribunal to arbitrate and determine whether the future act can be done and, if so, on what conditions.

Low Impact Proposals

If the government that intends to do the proposed future act considers that it is unlikely to affect native title rights and interests, it can include a statement in the section 29 notice that it considers the act attracts the 'expedited procedure'.

If the expedited procedure applies to a proposed future act, the act can be done without negotiating with native title parties. A native title party can object to the use of the expedited procedure within four months from the date given in the section 29 notice. If an objection is made, the Tribunal must determine whether the act is one attracting the expedited procedure. If it determines that the act does not attract the expedited procedure, the right to negotiate will apply. If the Tribunal determines that the expedited procedure does apply, the proposed future act can go ahead without negotiation.

State and Territory Bodies

States and Territories may establish alternative bodies to the Tribunal to handle relevant future act matters. Currently, only South Australia maintains such a body through its Environment, Resources and Development Court.