



Express law fast track information for clients

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Amendments to the Native Title Act 1993

Background

In September 2005, the Attorney-General, the Hon. Philip Ruddock MP, announced a package of reforms to improve the performance of the native title system.

The package included six interrelated elements:

- measures to improve the effectiveness of representative Aboriginal/Torres Strait Islander bodies (representative bodies)
- an independent review of native title claims resolution processes (the Claims Resolution Review)
- measures to encourage the effective functioning of prescribed bodies corporate (PBCs), the bodies established to manage native title once it is recognised
- technical amendments to the *Native Title Act 1993*
- reforms to the Guidelines on the Provision of Financial Assistance by the Attorney-General under the Native Title Act 1993 (Respondent Funding Guidelines) to encourage agreement making rather than litigation and
- increased dialogue and consultation with State and Territory governments to promote and encourage more transparent practices in the resolution of native title issues.

Aspects of the reform package required amendments to the *Native Title Act 1993*. These amendments were progressed in two stages.

Native Title Amendment Act 2007

The *Native Title Amendment Act 2007* (2007 Act) came into force on 15 April 2007. The 2007 Act implements key components of the government's package of reforms relating to the Claims Resolution Review, representative bodies, PBCs and the provision of funding to respondents in native title claims.

Claims Resolution Review

The 2007 Act includes amendments to:

- promote better communication and coordination between the Federal Court and the National Native Title Tribunal (NNTT)
- remove the duplication of functions between the Court and the NNTT
- improve the effectiveness of NNTT mediation and

- facilitate improved behaviour of parties.

These reforms will enable the Court and the NNTT to work together in guiding parties to facilitate agreement and will ensure that those cases where agreement cannot be reached are identified earlier and may be resolved more expeditiously by the Court.

Representative bodies

The 2007 Act introduces a new regime for representative bodies which:

- introduces fixed-term recognition periods for representative bodies
- broadens the range of organisations that can become representative bodies
- simplifies the criteria for recognising and withdrawing recognition from representative bodies and
- makes it easier to change representative body areas.

Prescribed bodies corporate

The 2007 Act allows an existing PBC to be used for subsequent native title determinations and enables regulations to be amended to give native title holders more flexibility to determine when they want to be consulted by their PBC.

Respondent Funding Guidelines

The revised Respondent Funding Guidelines commenced on 1 January 2007. The guidelines were revised to encourage agreement making, rather than litigation, to resolve native title issues. The 2007 Act provides assistance in a wider range of circumstances for work in relation to the right to negotiate process.

Native Title Amendment (Technical Amendments) Bill 2007

The *Native Title Amendment (Technical Amendments) Bill 2007* (2007 Technical Amendments Bill) was passed by Parliament on 20 June 2007. It has not yet received Royal Assent. The 2007 Technical Amendments Bill primarily comprises minor and technical amendments to clarify processes and remove impediments without unduly impacting on the procedures established in the *Native Title Act 1993*. Some of the technical amendments will:

- improve the process for notifying Indigenous Land Use Agreements
- amend notification provisions to ensure appropriate parties are notified of new or amended claims
- exempt amended claims from going through the registration test where the amendments would not affect the interests of other parties, such as where the rights and interests being claimed are reduced
- provide for *de novo* review of registration decisions by a member of the NNTT in addition to the existing provision for review by the Court
- restrict the use of information obtained by the NNTT in exercising its assistance function and
- clarify when information is added to, amended on or removed from the registers setting out details of native title claims, determinations and Indigenous Land Use Agreements.

Most of these technical amendments will come into force on a date to be fixed by proclamation.

The 2007 Technical Amendments Bill also includes other minor amendments to provisions relating to representative bodies. In addition, it permits PBCs to charge fees for certain native title negotiations and allows for the prescription of a body to perform PBC functions in certain limited circumstances.

More information

For more information about the reforms to the native title system see <http://www.ag.gov.au/nativetitlesystemreform>.

For further information please contact:

Peter Jeffery
Senior General Counsel
T 02 6253 7091 F 02 6253 7304
peter.jeffery@ags.gov.au

Gavin Loughton
Senior Executive Lawyer
T 02 6253 7203 F 02 6253 7383
gavin.loughton@ags.gov.au

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