

Native title organisations review terms of reference

Background

The Minister for Families, Community Services and Indigenous Affairs has initiated a review of the role and functions of native title representative bodies (NTRBs) and native title service providers (NTSPs) to ensure that they continue to meet the evolving needs of the system, and particularly the needs of native title holders after claims have been resolved.

The Australian Government has emphasised the potential for native title to be a platform for long-term Indigenous social, cultural and economic development through maximising and protecting the benefits flowing from agreements and strengthening the capacity and governance of Indigenous corporations.

The changing native title environment sets the context for the review. With few exceptions, since the commencement of the Native Title Act 1993, NTRBs and NTSPs have focussed their services to native title holders on resolution of native title claims. However, as more claims are determined and more Registered Native Title Bodies Corporate (RNTBCs) are established, there is a growing need for a framework for post-determination or post-settlement support for native title holders. It will be important to ensure that RNTBCs have the capacity to complete corporate compliance, perform future act related activities and pursue economic, social and cultural development. Different approaches to claims resolution including alternative and broader settlements also impose new demands on NTRBs, NTSPs and RNTBCs which are not reflected in their existing statutory functions.

Terms of reference

The Reviewer will undertake a review of the role and statutory functions of NTRBs and NTSPs in the light of the changing environment and make recommendations on whether changes are required to ensure that the scope and quality of services to native title holders and claimants are appropriate. In making the recommendations, the reviewer should not assume the availability of additional financial resources.

Specifically, the Reviewer will:

- Examine the range of functions, both statutory and non-statutory currently performed by NTRBs and NTSPs;
- Consider whether NTRBs and NTSPs could adopt a broader role in promoting and facilitating sustainable use of benefits flowing from agreements and settlement of claims;
- Consider whether there is a continuing need for the recognition provisions in Part 11 of the Native Title Act, noting that 6 of the current 15 native title organisations are NTSPs and therefore outside of the recognition scheme;
- Examine the scope for rationalisation of the numbers of NTRBs and NTSPs currently operating in the native title system;
- Consider whether there should be legislative changes to NTRB and NTSP existing powers and functions specifically to include assistance to RNTBCs, where appropriate, to attain the capacity to undertake their functions in the best interests of their members and the native title group and in accordance with their legislative and governance requirements (noting that not all RNTBCs require such assistance);

- Consider the nature of that assistance, canvassing capacity building, and direct or indirect provision of financial, legal and dispute resolution services;
- Consider the current nature of services to native title holders and claimants by non-NTRB and NTSP based professionals, and the impact on the native title system of these services;
- Consider whether there should be legislative or regulatory changes to ensure the scope and quality of services to native title holders from non-NTRB and NTSP based professionals are appropriate;
- Make other incidental recommendations relating to the future role and functions of NTRBs, NTSPs and RNTBCs to facilitate effective support for native title holders and claimants.

Process and timeframe

In undertaking the review, the reviewer will consult with interested stakeholders and communities including NTRBs, NTSPs and their Boards, RNTBCs, the National Native Title Council (NNTC), members of the Native Title Consultative Committee (representing relevant Australian Government agencies), the Office of the Registrar of Indigenous Corporations, State and Territory governments, and the Minerals Council of Australia.

The reviewer will consult specifically with a reference group comprising representatives of the NNTC and NTRBs/NTSPs and other organisations as identified by the Department of Families, Housing, Community Services and Indigenous Affairs. The reviewer will prepare an initial discussion paper that will be made public, and seek submissions from any interested parties, including native title claimants and holders and RNTBCs.

Prior to publication, the reviewer will seek the views of the reference group on the discussion paper. The reviewer will report to the Minister within 12 months of commencement.