

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIVE TITLE AMENDMENT BILL 2006**

**SECOND READING SPEECH**

It is more than twelve years since the commencement of the *Native Title Act 1993*, which was enacted in response to the landmark High Court decision in *Mabo (No 2)*. It is over eight years since the 1998 amendments to the Act were passed, which included measures identified in response to another significant High Court decision, the *Wik* judgment. Unlike the 1993 and 1998 legislation processes, the Native Title Amendment Bill 2006 is not being introduced in response to any judicial decision. The key catalyst for the Bill is the Government's commitment to improve the performance of the native title system.

While native title matters are complex, most stakeholders acknowledge the current framework for resolving native title applications remains too costly and time-consuming. It is a matter of clear concern that many Indigenous Australians have not been able to see resolution of their claims within their lifetime, and have therefore been unable to enjoy due recognition of their rights under law. It is in the interests of all Australians, not just parties to claims, that claims are determined more expeditiously.

In September 2005, I announced the Australian Government was undertaking a comprehensive reform process examining all aspects of the native title system. The package of reforms, of which this Bill is only part, is designed to ensure the system delivers effective outcomes more expeditiously for all parties, and to encourage agreement-making in preference to litigation. The Government is not seeking to disturb the fundamentally important object of the Native Title Act to recognise and protect native title. The measures in the Bill do not seek to wind back or undermine native title rights and focus largely on the framework for determining native title claims.

A second bill to implement outstanding measures from the package of reforms will be introduced into Parliament early next year, and will include minor and technical amendments designed to improve the workability of the Act. Collectively, the legislative changes and other non-legislative reforms will promote performance across the system.

### **More effective Tribunal mediation**

This Bill will amend the Native Title Act to implement measures from the Claims Resolution Review, an independent study commissioned by the Government. The Review found institutional reform was needed to facilitate more effective resolution of claims, particularly with respect to the role of the National Native Title Tribunal.

The Review concluded the effectiveness of Tribunal mediation was inhibited by a lack of powers to ensure parties participate productively. The Tribunal will be given powers to direct parties to attend mediation conferences and to compel production of documents. In addition, the Tribunal will be given new review and inquiry functions on matters that go to central issues in native title claims.

### **Better coordination and communication between the Court and Tribunal**

To limit potential for wasted resources and delay, amendments will remove potential duplication between the Court and the Tribunal and improve claims management between those bodies. The legislation will make clear mediation cannot be carried out by both bodies at the same time. The presumption is that all native title claims should be referred promptly to the NNTT for mediation, subject to specific exceptions.

There should be no unnecessary delay by the Court referring matters to the NNTT for mediation.

The Tribunal's role will be further strengthened by giving it a right to appear before the Court, and by expanding its reporting functions. The Court will be required to consider reports provided by the Tribunal when making orders in relation to relevant matters.

### **Behaviour of parties**

Reform to the institutional framework is only part of the solution to achieving more expeditious claims resolution. The Bill introduces measures directed at ensuring parties act responsibly.

A provision will be included to make clear all parties and their representatives must mediate in good faith. The Tribunal will be able to report breaches to the Court and – where relevant – to other bodies.

Claimants bear responsibility for ensuring claims, once lodged, are progressed appropriately. The Court’s power to dismiss claims that are unlikely to proceed to determination will be strengthened. Other amendments will assist in limiting the involvement of other parties in proceedings to issues which are directly relevant to their interests.

### **Effective and Accountable Native Title Representative Bodies**

Native title representative bodies (NTRBs) are recognised under the Act to assist claimants in preparing and advancing native title applications. The Bill introduces measures to ensure these bodies operate with greater effectiveness and accountability. Under the new provisions there will be enhanced flexibility in the NTRB system including by replacing the current indefinite recognition of NTRBs with fixed terms. The changes also address anomalies and inconsistencies in how changes to NTRB boundaries can be made.

### **Flexibility for Prescribed Bodies Corporate**

Consistent with the need for a balanced approach to the reforms, the Bill also introduces amendments to the regime for Prescribed Bodies Corporate (PBCs), which are the bodies responsible for managing native title following a determination. The amendments will enable improvements to the PBC regime to accommodate the specific interests of the native title holders.

### **Extending respondent funding scheme to cover more agreements**

Consistent with the Government's strategy of encouraging resolution of native title claims through agreement making, the Bill includes a measure to enable financial assistance to be provided in a wider range of circumstances to respondents participating in the right to negotiate process.

### **Conclusion**

The reforms in this Bill have been the subject of extensive consultation with stakeholders. While it does not seek to disturb the general framework governing native title, and does not undermine the existing balance of rights under the Native Title Act, the measures will provide a platform to enable more efficient and effective outcomes, which is in the interests of all Australians.

I will be continuing to work with all stakeholders to secure the promise which native title can and should offer for a better Australia.

I commend the Bill to the House.