

# NATIVE TITLE (AMENDMENT) ACT 2007 (CTH)

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Act No 61 of 2007  
Assented to 15 April 2007

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The purpose of the *Native Title (Amendment) Act 2007* (Cth) ('the Act') is to allow for more efficient management and faster resolution of native title claims. The Act amends the *Native Title Act 1993* (Cth) ('NTA'), and provides the most significant changes to native title legislation since the 1998 amendments.

The Act includes measures to:

- implement the Government's response to the Claims Resolution Review;
- make Native Title Representative Bodies ('NTRBs') more effective;
- implement two of the recommendations from the Report on the Structures and Processes of Prescribed Bodies Corporate;
- increase measures to encourage the effective functioning of Prescribed Bodies Corporate ('PBCs');
- reform the native title non-claimants (respondents) financial assistance program to encourage agreement-making rather than litigation; and
- increase dialogue and consultation with the state and territory governments to promote and encourage more transparent practices in the resolution of native title.

The Act implements the Government's response to the Claims Resolution Review in Schedule 2, including encouraging mediation rather than litigation in the resolution of native title claims, increasing the role and power of the National Native Title Tribunal ('NNTT'). The NNTT has additional powers under the Act to mediate claims more effectively, including compelling parties to attend mediation, collecting evidence and reporting those not acting in good faith.

The Act aims to make NTRBs more effective by changing the recognition and funding system. NTRBs were previously required to be incorporated under the *Aboriginal Corporations*

*and Associations Act 1976* (Cth). A body that is funded to perform some or all of the functions of a NTRB may now act as a NTRB, under a new section 203FEA inserted into the original Act. While the change may mean more access to representation for native title holders, it is yet to be seen whether organisations without the structure and aims of a NTRB can adequately perform the same functions.

The Act also restricts the previous NTRB recognition scheme from an indefinite to a fixed term between one and six years. This aims to ensure that NTRBs focus on achieving outcomes within a certain time. However, a native title claim is unlikely to be resolved in one year and the changes may lead to added uncertainty. The Act enables the Commonwealth Minister to withdraw recognition of a NTRB that is not performing adequately and appoint a replacement. This will lead to more accountability of NTRBs, however it will likely also cause more delays.

The Act increases funding under the respondent funding scheme to cover legal and other costs, but emphasises agreement-making to encourage a cooperative approach. The Act also incorporates two of the recommendations from the Report on the Structures and Processes of Prescribed Bodies Corporate. Under the *NTA*, when a native title determination is made, the holders must establish a PBC to manage their interests. Schedule 3 of the Act incorporates a new section, 59A, stating that a PCB may now hold the native title rights and interests in trust for the holders, or act as an agent, including entering into binding agreements. These changes will allow the PCB to function more effectively.

***This Act amends the Native Title Act 1993 (Cth). The full text of both the original and Amending Act are available online at <<http://www.austlii.edu.au>>.***