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**Australian Government**  

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**Australian Law Reform Commission**

## Review of the *Native Title Act* – at a glance

The ALRC is conducting an Inquiry into some aspects of native title law—to do with connection, authorisation and joinder. This document provides a short overview of the Inquiry. For more detail, you can read our Issues Paper: <http://www.alrc.gov.au/publications/native-title-ip-45>

### **What is native title?**

Native title is the recognition by Australian law that some Aboriginal and Torres Strait Islander people have rights and interests in land or waters that come from their traditional laws and customs.

Native title was first recognised in Australia by the High Court in the case of *Mabo* in 1992. After *Mabo*, the *Native Title Act 1993* (Cth) was introduced. This Act sets out processes for claiming native title. The *Native Title Act* also sets out how native title interacts with other people's rights and interests. A claim for native title can be determined either by agreement or in a hearing before a court.

For more about the native title process, see the resources on the National Native Title Tribunal website: [www.nntt.gov.au](http://www.nntt.gov.au).

## Connection

One of the areas that the ALRC is looking at is what needs to be proved to a court (or agreed between parties to a native title claim) to show that Aboriginal or Torres Strait Islander people have a connection to a particular area of land or waters. Proving that this connection exists is one step in the process of showing that Aboriginal or Torres Strait Islander people hold native title over an area.

The process for proving connection is complex. In simple terms, Aboriginal or Torres Strait Islander people have to show that they have maintained a connection with the land or waters being claimed since before European settlement. Aboriginal or Torres Strait Islander people can prove that this connection exists by showing that they have continuously acknowledged traditional law and observed traditional custom from settlement to the present.

The ALRC is looking at whether there should be changes to this process. Some ways it could be changed might be:

- changes to the way some facts about connection need to be proved to a court, for example, by introducing a presumption that connection has continued since pre European settlement;
- defining terms in the *Native Title Act*, such as what 'traditional' means;
- making clear in the *Native Title Act* that Aboriginal or Torres Strait Islander people can stay connected to land even where they do not occupy the land, or haven't used it recently;
- allowing the court in some cases to disregard evidence that there has been an interruption to connection.

## Native title rights and interests

What it means to say that a group has native title will be different in different areas. This is because the content of native title comes from the traditional laws and customs of a particular group of Aboriginal or Torres Strait Islander people. It is also because the grant of other interests in land in a particular area may have 'extinguished' all or part of the native title that existed.

Native title may give a group of people (the native title holders) a range of different rights in a particular area.

These rights could include the right to:

- access and move about an area;
- live, to camp and to erect shelters;
- hunt and fish;
- gather and use the natural resources of the area;
- conduct ceremonies and hold meetings on the area;
- take part in cultural activities;
- visit, maintain and preserve sites and places of cultural or spiritual significance.

It may also include other rights. In some cases, native title can include the right to possess and occupy an area to the exclusion of all others.

There is some debate about whether a native title right can be a commercial right. There is also debate about what a commercial native title right might mean. The ALRC is considering this issue of commercial native title rights.

## **Authorisation**

The group of Aboriginal or Torres Strait Islander people who make a claim that they hold native title in a particular area are called the 'native title claim group'.

Authorisation is the legal term for the process where a native title claim group decide (authorise) who in their group will take their native title claim to court. These people are called the 'applicant'. The applicant can also make other decisions about the native title claim.

## **Joinder**

This is the legal term for who can be involved (joined) in a court case about native title. A person involved in a court case is called a 'party'.

The group of people who are claiming native title are called the 'applicant'. The other parties involved in a native title case are called 'respondents'.

Some of the people who can be respondents in a native title case are:

- the state or territory where the land or waters is claimed;
- those who hold, or claim to hold, native title in the area of land and waters claimed; and
- those who hold another type of interest in the land or waters claimed that might be affected by native title (eg a pastoral lease, or a mining lease, or a fishing licence).

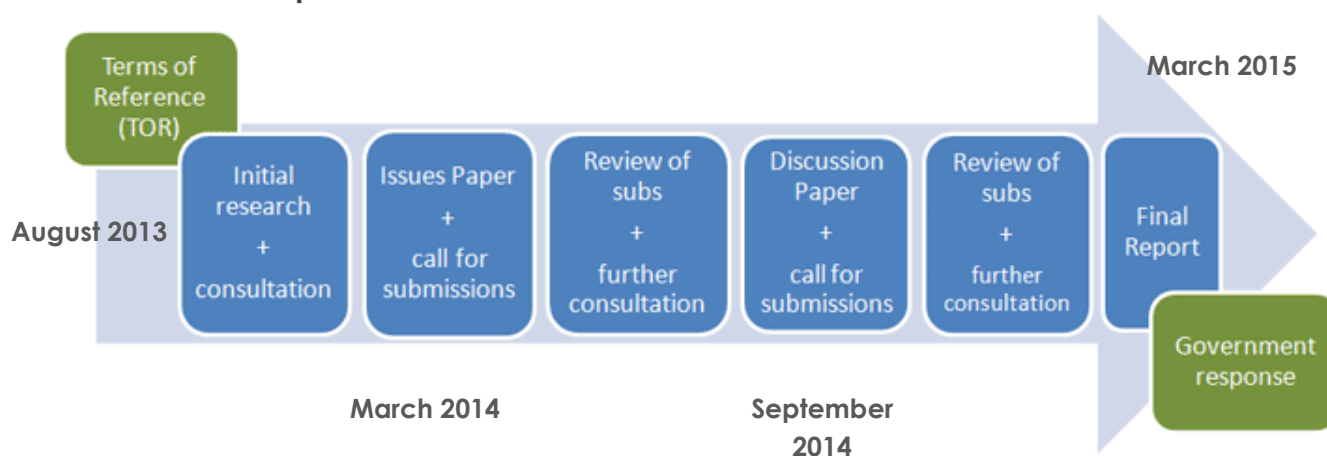
Some people who have an interest that might be affected by native title can apply at any time to the court to join (or become a party) to the case. The court may join the person if it is in the interests of justice to do so.

The court may also dismiss a party to a native title case, meaning that they can no longer take part in the case.

The ALRC is considering whether the current law regarding authorisation and joinder involves any barriers to access to justice for:

- people who are claiming or who may claim native title; or
- respondent parties.

### ALRC law reform process



We have asked a number of questions about native title in our Issues Paper: [www.alrc.gov.au/publications/questions-0](http://www.alrc.gov.au/publications/questions-0).

Based on answers to these questions and other research, the ALRC will make proposals for changes to the law. These will be contained in a Discussion Paper to be released in September 2014. There will be an opportunity for people to comment on these proposals, before we make recommendations in a Final Report in March 2015.

For more information on the ALRC Inquiry process, go to: <http://www.alrc.gov.au/law-reform-process>.