



Native Title Respondent Funding Scheme Review

Frequently Asked Questions

What are the changes?

As part of the 2011-12 Budget, the existing 26 statutory and non-statutory financial assistance schemes administered by the Department (including the Native Title Respondent Funding Scheme and native title officer funding) will be consolidated into one scheme that will provide financial assistance for disbursements. In exceptional circumstances funding will be provided for legal representation.

What is a disbursements-only scheme?

Under the new scheme, payments will be made for disbursements, and for legal representation in exceptional circumstances. Exceptional circumstances will include Commonwealth public interest & test cases, unlawful overseas child removal, people facing life imprisonment or the death penalty overseas and a revised interest test for respondent funding in native title matters.

When will the changes take effect?

1 July 2012.

What is the reason for change?

There will be significant changes in the nature of financial assistance provided by the Attorney-General's Department. The existing statutory and non-statutory schemes will be consolidated into one scheme that will provide funding for disbursements, and for legal representation in exceptional circumstances.

These changes will significantly enhance access to financial assistance for a broader range of applicants and provide greater support for pro bono work.

The native title system has now been in place for over 15 years and many issues of law have been settled. It is increasingly the case that native title matters are being resolved out of court. It is therefore an appropriate time to conduct a reassessment of the way that respondent funding is provided in native title matters.

The consolidation of the existing schemes will ensure that the limited funding available is administered more efficiently.

What are the changes in funding levels?

These changes will mean that in 2011-12, financial assistance funding is reduced by \$0.71m ongoing, with the savings to be delivered from native title respondent funding. This is being achieved through stricter application of the existing guidelines; *Guidelines on the Provision of Financial Assistance by the Attorney-General under the Native Title Act 1993*.

From 2012-13, as the 26 existing schemes are consolidated, funding will reduce by \$2.50m ongoing.

What is the purpose of the changes?

The changes to native title respondent funding are part of a broader process of consolidating all Commonwealth financial assistance schemes into a single scheme. This scheme will primarily cover the cost of disbursements across a wide variety of legal matters; with legal representation costs covered in exceptional circumstances.

Has the purpose of native title respondent funding changed?

The purpose of the scheme remains to allow respondent parties with an interest that may be affected by the recognition of native title to participate in the native title claims process. However, the focus of the scheme has shifted in recent years.

As the native title system has been in place for over 15 years and many issues of law have been settled, the effect of native title on existing rights and interests is now more certain, and the resolution of native title claims has become less adversarial.

There has been an increased focus on negotiated, rather than litigated, outcomes from both the Court and parties, which has changed the types of activities respondents engage in and are now funded for. For example, respondents are less likely to receive funding to participate in a trial that they have initiated.

Are the changes in accordance with the Native Title Act 1993?

Yes. Subsections 213A(4) and (5) of the *Native Title Act 1993* provide the Attorney-General with the discretion to determine the manner in which financial assistance is provided and to establish guidelines for the authorisation of assistance under section 213A.

Will funding be available for native title officers after 1 July 2012?

The specific parameters of the new scheme will be informed by the independent consultant's report.

All input received through the review process will inform the Department's decision-making regarding the specific parameters of the new scheme from 1 July 2012.

You are encouraged to provide input via written submissions by email to NTRFSreview@ag.gov.au.

A submission template is available on the Department's 'Native Title Respondent Funding Scheme' webpage - <http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_FinancialassistancebytheAttorney-Generalinnativetitlecases>

The deadline for written submissions is **14 October 2011**.

What about funded matters that are not resolved before 1 July 2012?

All grants that commence during the 2011-12 financial year will be dealt with under the existing scheme.

From 1 July 2012, the rules of the new scheme will apply.

What is the review about?

The Department is considering all aspects of eligibility for funding for native title respondents (including native title officer funding), including the circumstances in which funding for legal representation should be granted.

The independent consultant, Mr Anthony Neal SC, will produce a report to inform the scope of the new scheme. The consultant will consider:

- the effectiveness of the native title respondent funding scheme within the native title system as a whole
- the scheme's alignment with the access to justice principles identified in the *Strategic Framework for Access to Justice*
- a quality assessment of the outcomes achieved by the scheme as a whole, including the role of native title officers
- a cost-benefit analysis of the current scheme's arrangements
- alternatives to current funding arrangements, and
- an appropriate rate for funding legal representation, where a circumstance qualifies as 'exceptional' under the new scheme.

What will the review involve?

The review will involve a period of consultation and the opportunity for interested parties to provide written submissions to the Department. The Department has engaged an independent consultant, Mr Anthony Neal SC, to produce a report on the Native Title Respondent Funding Scheme, including native title officer funding. Mr Neal's report will take all submissions into account.

After reviewing this report, the Department will develop and refine the specific parameters of the new scheme as it relates to native title respondent funding and other matters.

The complete terms of reference for the consultancy and templates for written submissions are available on the Attorney-General's Department 'Native Title Respondent Funding' webpage.

You are encouraged to provide input via written submissions by email to NTRFSreview@ag.gov.au.

A submission template is available on the Department's 'Native Title Respondent Funding Scheme' webpage - http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_FinancialassistancebytheAttorney-Generalinnativetitlecases

The deadline for written submissions is 14 October 2011.

What circumstances will qualify as 'exceptional' for determining eligibility for payment of legal representation costs?

The specific parameters of the new scheme will be informed by the outcomes of the review. The Department will develop a revised interests test for determining eligibility for funding under the new scheme and the definition of exceptional circumstances in the context of native title matters.

All input received through the review process will inform the Department's decision-making regarding the specific parameters of the new scheme to commence from 1 July 2012.

Who is the independent consultant?

The independent consultant is Mr Anthony Neal SC.

Mr Neal has over 30 years experience at the Bar and was made Senior Counsel in 2003. He has a wide range of experience in civil law practice, including six years as Counsel assisting the Aboriginal Land Commissioner in land claims in the Northern Territory. During this time, Mr Neal appeared in *Yorta Yorta* at trial and at subsequent appeals to the Full Federal Court and the High Court.

Since *Yorta Yorta*, Mr Neal has been briefed in native title matters and has appeared for both claimant and respondent parties. Mr Neal represented the State of Victoria in the *Wotjobaluk, Gunditjmara* and *Gunai/Kurnai* native title claims.

What is the consultation process?

All interested parties are encouraged to provide written submissions by email addressed to NTRFSreview@ag.gov.au.

The independent consultant, Mr Anthony Neal SC, will meet with a representative sample of native title non-government respondent funding recipients. Meetings will be conducted in person and by phone.

The consultant will also meet with a number of other participants in the native title system to ensure all perspectives are covered.

A submission template is available on the Department's 'Native Title Respondent Funding Scheme' webpage <<http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_FinancialassistancebytheAttorney-Generalinnativetitlecases>

The deadline for written submissions is 14 October 2011.

Will written submissions be published?

Yes. Written submissions will be published on the Department's website, unless the writer indicates that they do not consent to publication of their submission.

In meeting the Australian Government's commitment to enhancing the accessibility of published material, the Department will only publish submissions on its website that have been submitted electronically. The following formats are preferred:

- Microsoft Word (DOC)
- Rich Text Format (RTF)
- Portable Document Format (PDF)
- Text format (TXT)

Please limit individual file sizes to less than 5MB.

Hardcopy submission received by mail or fax will still be considered by the Department. However, they will not be published on the website.

The Department reserves the right to edit (for example remove defamatory material) or not publish submissions on its website at its own discretion.

Will I have an opportunity to meet with the consultant in person?

Selected stakeholders will receive invitations to meet with the consultant in person. Those selected will represent a broad range of interests and will be as geographically diverse as practicable.

All interested persons will be able to make written submissions to the review.

A submission template is available on the Department's 'Native Title Respondent Funding Scheme' webpage <http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_FinancialassistancebytheAttorney-Generalinnativetitlecases>

The deadline for written submissions is 14 October 2011.

What difference can my submission make?

You have an opportunity to provide input on the specific parameters of the new scheme, including the development and application of a revised interest test for native title respondent funding.

The decision to move to a consolidated scheme to provide for disbursement costs, and legal representation in exceptional circumstances, was part of the 2011 Budget. There is no scope for altering this aspect of the new scheme.

All input received through the review process will inform the Department's decision-making regarding the specific parameters of the new scheme from 1 July 2012.

You are encouraged to provide input via written submissions by email to NTRFSreview@ag.gov.au.

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