



# Native Title Respondent Funding Scheme Review

## *Consultancy Terms of Reference*

### *Consultancy*

The Financial Assistance Section, within the Social Inclusion Division of the Attorney-General's Department (the Department), plans to enter into a contract with Mr AC Neal SC to conduct a review of the current system of respondent funding in native title matters.

### *Purpose*

The purpose of the review is to examine the efficiency and effectiveness of existing arrangements for financial assistance to native title respondents and for native title officer funding and to develop a revised interest test for the determination of exceptional circumstances for the provision of funding for legal professional fees to native title respondents.

### *Scope of the review*

The review will consider six elements:

1. Effectiveness of the native title respondent funding scheme within the native title system as a whole. This will include consideration of:
  - how the native title system has evolved, the impact of case management reforms, trends in rates of determination
  - frequency of new or groundbreaking issues vs routine matters
  - level of mediation participation in the native title system; level of resolution through mediation – recognition of the Department's policy that matters are resolved by mediated agreements where possible
  - targeted respondent participation in claims including, optimal point of entry/duration of respondent participation to protect their specific interests, and
  - other pressures that are addressed/ameliorated in the native title system by existing arrangements and funding levels.
2. The level of alignment of the scheme with the principles of access to justice as identified in the *Access to Justice Strategic Framework*. This will include consideration of the level of alignment of Native Title Respondent Funding Scheme and Native Title Officer funding arrangements with access to justice principles and broader eligibility for Commonwealth legal assistance
3. Assessment of the quality of outcomes achieved by the scheme as a whole, including the role of native title officers. This will include consideration of:
  - whether respondent funding is contributing to high quality, cost effective outcomes with particular consideration of the role of native title officers
  - the extent to which outcomes could be maintained with reduced funding levels
  - the impact of not achieving the outcomes attributable to current funding arrangements

- available evidence to support the value of the native title officer role in particular, and respondent funding in general, and
  - the level of specific native title legal expertise required for representation in native title matters.
4. Cost-benefit analysis of the current arrangements. This will include consideration of:
    - costs and benefits of the role of native title officers, and
    - impact on the native title system if group representation arrangements were removed, resulting in means testing applied to all applicants for respondent funding.
  5. Alternatives – the review will capture suggestions and input from stakeholders, as well as undertaking independent analysis to identify potential alternatives to the existing model. These considerations should be done in the context of the move to a disbursements-only scheme and reduced overall funding levels from 1 July 2012. Considerations include exploration of a stricter interest test for respondents, the impacts of aligning funding with the provision of legal aid in the general community and consideration of options such as capped funding amounts per matter or issue.
  6. Appropriate funding rate for legal representation, where a circumstance qualifies as ‘exceptional’ under the new, disbursements-only scheme.

### ***Review requirements***

To undertake this review, in addressing elements of scope identified above, Mr Neal will consult with a representative sample of stakeholders including current recipients, representatives from peak industry bodies, native title representative bodies, states and territories, the Federal Court and National Native Title Tribunal. Meetings will not be held with individual claimants or groups of claimants.

### ***Written submissions***

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. All stakeholders are encouraged to provide input via written submissions by email to [NTRFSreview@ag.gov.au](mailto: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](http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_FinancialassistancebytheAttorney-Generalinnativetitlecases)

The deadline for written submissions is **30 September 2011**.

### ***Project timeline***

The review will be conducted over a two month period, with the final report to be presented to the Department by the end of October 2011.

### ***Privacy protections***

Written submissions will be published on the Department’s website, unless the writer indicates that they do not consent to publication of their submission. Submissions will not address personal or private information. Any personal contact details or other information that is not relevant to the submission will be removed.

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