

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

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Question No. 30

Senator Barnett asked the following question at the hearing on 20 October 2008:

In relation to outstanding Native Title claims:

- (a) outline current initiatives aimed at addressing the backlog, and
- (b) when does the Department envisage outstanding claims will be addressed and resolved?

The answer to the honourable senator's question is as follows:

(a) The Australian Government has announced institutional changes to improve the operation of the native title system. The Federal Court of Australia will assume a central role in managing all claims, including determining where claims will be mediated by the Court or the Tribunal. Having one body control the direction of each case means that the opportunities for resolution can be more readily identified, the spectrum of case management activities best harnessed and the efforts of the parties best focussed. The Government intends this change to commence on 1 July 2009.

The Attorney-General has also called on all native title parties to take a more flexible, less technical and more interest-based approach to native title. The Attorney-General believes that behavioural change by all parties is key to reducing the time it takes to resolve claims.

In line with this, the Government announced on 17 July 2008 that it will take a more flexible approach to recognising native title in Australia's territorial waters. The Commonwealth will now accept that native title can exist out to the limits of the modern territorial sea (generally 12 nautical miles), rather than merely to the limits of the territorial sea at time of sovereignty (generally three nautical miles). Given the Commonwealth is the major respondent in all sea claims, this approach should assist in reaching negotiated settlements in a number of native title claims.

The 2008 Review of funding of the native title system was concluded in August 2008. Recommendations were made in the review about improvements to the native title system. The recommendations from the Review are now forming part of the 2009/10 budget process.

A Native Title Ministers' Meeting was held in July 2008. Arising from that meeting was agreement between State and Territory and Commonwealth Ministers to progress numerous initiatives to improve the operation of the native title system. These initiatives include the Joint Working Group on Indigenous Land Settlements, which is developing policy options for progressing broader and regional native title settlements, and agreement to negotiate a revised Financial Assistance Agreement between the Commonwealth and States and Territories to more adequately target the conclusion of broader and regional native title settlements.

(b) As the Commonwealth is not the primary respondent to native title claims and is only a party to approximately 25% of claims, we cannot provide a timeframe for when outstanding claims will be addressed and resolved. However, the Government is working to improve the operation of the system, including through the initiatives outlined in part (a) of this response. The time it takes to

resolve all outstanding claims will depend upon the extent to which all parties are willing to change their behaviour and engage actively in progressing claims to resolution.