

resources industry, and the allocation of greater resources to Native Title Representative Bodies and Prescribed Bodies Corporate are key factors identified as important to improving Indigenous economic and social benefits for Indigenous people.

The complexities and burdens linked to the present tax regime was an additional matter explored in the discussion paper. The limited scope for economic development arising from charitable trusts is a key concern. Given that most native title groups opt for this mechanism to manage their benefits, the report recognises significant restraints such as deductibility restrictions for Indigenous communities and organisations as well as restrictions on Indigenous community development stemming from the current exemption provisions of the *Income Tax Assessment Act 1997* (Cth).

The discussion paper suggests that base level benefits to traditional owners involved in negotiations might successfully be enforced through legislation, prescribing minimum and maximum payments and therefore encouraging greater emphasis on negotiations of the non-economic benefits of agreements.

Submissions are invited in response to the discussion paper, due by 13 February 2009. For the full paper and Working Group report see the [Attorney-General's Department webpage](#).

Proposed native title amendments

The Attorney General has announced that the Government will introduce amendments to the *Native Title Act 1993* (Cth) to provide for a more central role for the Federal Court in managing native title claims.

The Attorney-General notes that 'The Court has significant alternative dispute resolution experience and has achieved strong negotiated results in past native title matters by taking an active role in the mediation process. This change will give the Court control over all native

title claims brought before it from start to end. Having one body control the direction of each case means that the opportunities for resolution can be more readily identified. This reform has the potential to significantly improve the operation of the native title system.'

The Discussion Paper, released in December 2008, outlines the minor legislative amendments. These include:

- Enabling the Court to rely on a statement of facts agreed between parties;
- Enabling the Court to make determinations that cover matters beyond native title;
- Giving effect to the provisions of the *Evidence Amendment Act 2008* (Cth), particularly focussing on the early evidence rules and exceptions to the transitional provisions;
- Amendments to the recognition and re-recognition provisions for native title representative bodies and;
- Other changes to improve the conduct of native title litigation including a power for judges of the Federal Court to refer questions arising in proceedings to a referee for inquiry and report.

The Attorney-General has opened the discussion paper for consultation, and changes are anticipated to commence in July 2009. Submissions are to be made by February 16. For the full paper see the [Attorney-General's Webpage](#).

NTRU Project Reports

Job Vacancy – NTRU Research Officer – non-ongoing

AIATSIS is currently recruiting an NTRU Research Officer. The NTRU is the pre-eminent research program in Australia examining issues surrounding the recognition and protection of native title and contributing to the development of resources and information in the native title sector.

The successful applicant will be responsible for editing and producing our native title publications, assisting with public events, and conducting directed research projects. The Native Title Research Officer will also have opportunities to prepare submissions to parliamentary and other inquiries and contribute to the NTRU planning and reporting.

The ideal applicant for this vacancy will be motivated, innovative, a great team contributor and have an interest in the content of our research. Some experience editing academic work, organising events or developing web content would be desirable. A background in law would be a useful compliment to our team but is not essential.

Successful candidates will be offered a contract until 30 June 2009. We expect renewed funding for the program to be determined during this time and positions will be advertised for a further three years if successful.

Salary will be in the range \$54,356 to \$57,636 per annum (APS Level 5). Positions are based in Canberra.

Aboriginal people and Torres Strait Islanders are encouraged to apply.

For selection criteria contact:

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Closing date for applications: 23 January 2009

NTRU Publication

[Research Monograph: The 2007 Amendments to the Native Title Act 1993 \(Cth\): Technical Amendments or Disturbing the Balance of Rights? By Angus Frith \(with Ally Foat\)](#)

In 2005 the Attorney General announced an interconnected package of reforms to the native title system, focussing in particular on native title

representative bodies, the claims resolution process in the National Native Title Tribunal and the Federal Court, prescribed bodies corporate, financial assistance for non-claimant groups, dialogue with the States and Territories, and technical amendments. Reviews in these areas informed the drafting of the Native Title Amendment Act 2007 (Cth) and the Native Title Amendment (Technical Amendments) Act 2007 (Cth), much of which came into force in April and September 2007.

This paper describes the reform process, and each Government, independent and parliamentary review of Government proposals, and the draft legislation. It focuses on the substantive changes to the *Native Title Act 1993* (Cth), and their effect on native title practice and outcomes. The paper addresses the implications of the reforms enacted, in particular the changes affecting native title representative bodies and prescribed bodies corporate, and the shifts in the functions of the National Native Title Tribunal and its relationship with the Federal Court. The amendments make substantive changes in relation to these areas, which go beyond making the system more efficient.

The author discusses how the amendments confer greater discretion concerning the choice and operation of native title representative bodies on the executive government, which in turn adds to the uncertainty of and pressure on their relationships with native title groups. Increased accountability demands on native title representative bodies come amidst calls for increases in their funding levels, which have remained static for many years.

The amendments also signal a major shift in the balance in the roles of the National Native Title Tribunal and the Court, especially in respect of mediation, but also, to an extent, in the Court's litigation role. The Court's role in working with the Tribunal and in scrutinising the exercise of Government powers is diminished. The Tribunal is to play a far greater role in mediation, with new powers to assist that function.

The authors conclude that the trends may damage the enjoyment of procedural fairness by all parties, but in particular Indigenous people, who have historically suffered difficulties in achieving just recognition of their laws, customs and rights.